

Office Supreme Court, U. S.

FILED

OCT 4 1916

JAMES D. MAHER

CLERK

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1915.**

---

**No.  40**

---

**THE HUTCHINSON ICE CREAM COMPANY ET AL.,  
PLAINTIFFS IN ERROR,**

*v/s.*

**THE STATE OF IOWA.**

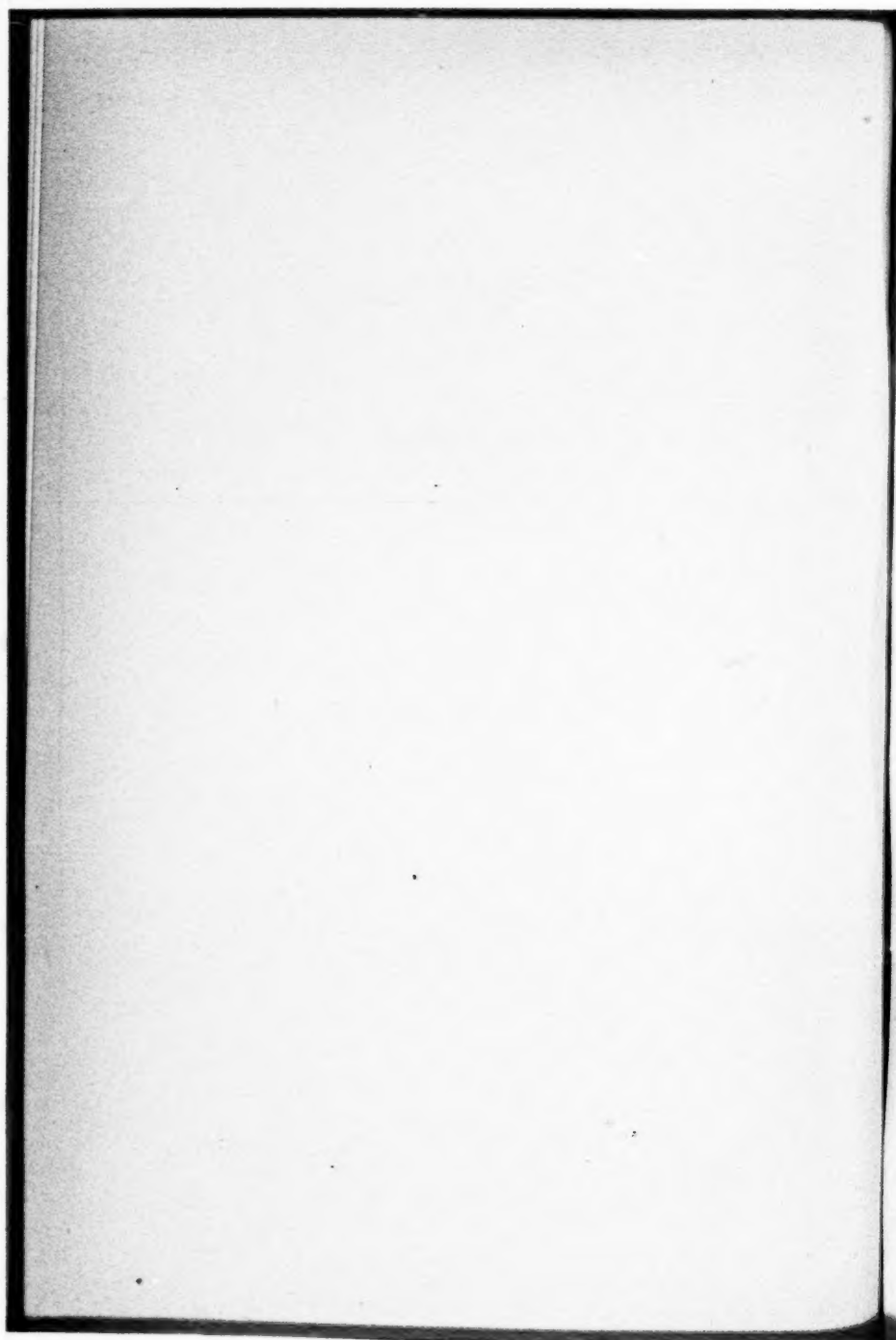
---

**APPENDIX TO BRIEF OF PLAINTIFFS IN ERROR.**

---

**WALTER JEFFREYS CARLIN,**  
*Counsel for Plaintiffs in Error.*

**(24,354)**



BRIEF

ON THE

History and the Present Meaning

OF THE

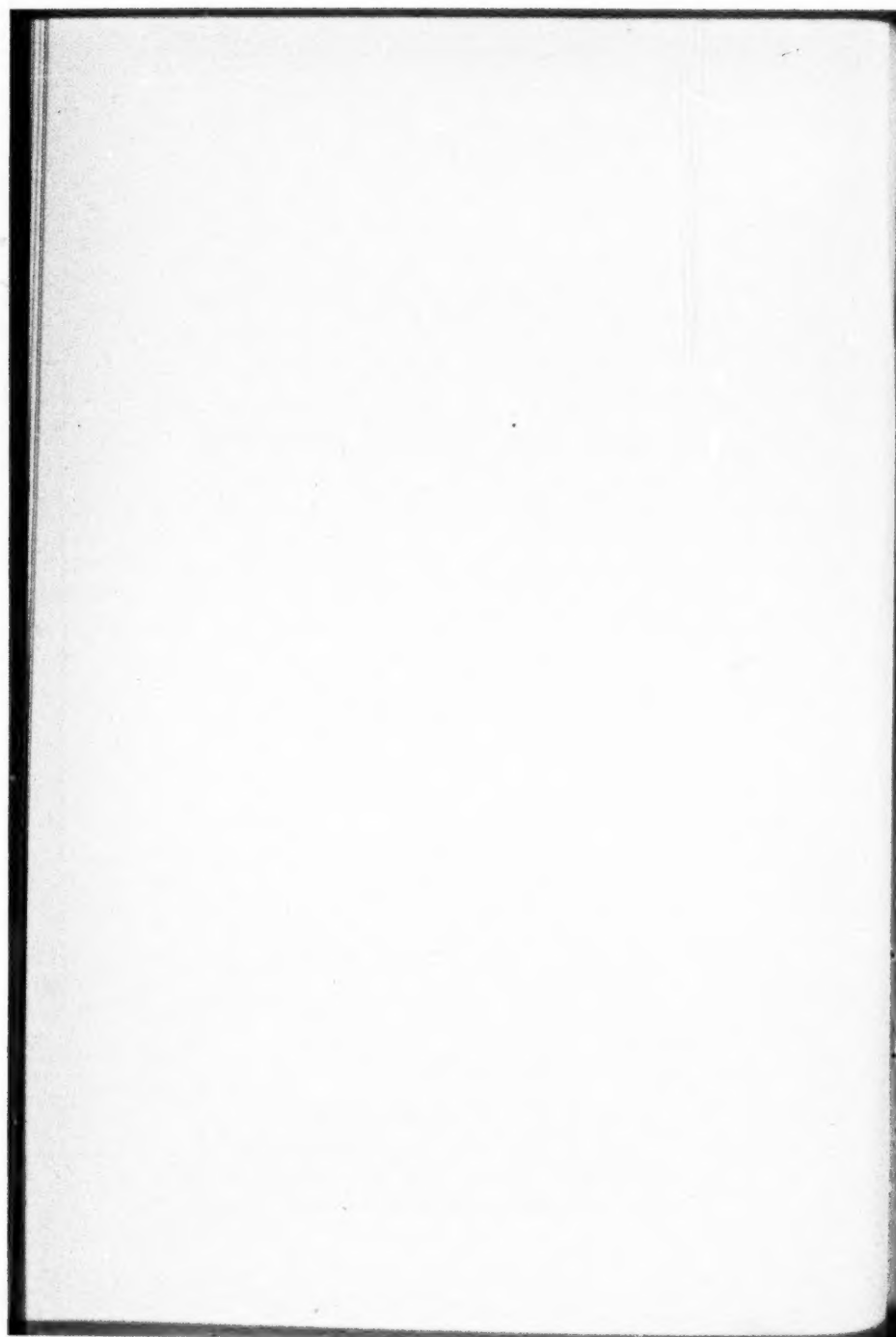
Term ICE CREAM

---

COMPILED BY

C. G. CHILD, A. M., Ph. D., L. H. D.,

Professor of the English Language in the University of Pennsylvania, Formerly  
Fellow of Johns Hopkins University, and for Seven Years Assistant  
Editor on the Staff of Worcester's Dictionary.





# INDEX.

	Page.
1. Purpose of the Brief.....	3
1. 1. Purpose .....	3
1. 2. Necessity .....	3
1. 3. Typical Errors in Judging of the Meaning of Words.....	3
1. 4. Method to be Followed in Determining the Meaning of a Word .....	4
1. 5. Divisions of the Inquiry.....	4
2. History of the Use of Ice Cream.....	5
2. 1. Classical and Oriental Use of Ice and Snow for Preserving and Chilling Food and Drink.....	5
2. 2. Use of Freezing Mixtures for Making Confections.....	5
2. 3. Frozen Confections in Italy.....	5
2. 4. In France .....	5
2. 5. In England .....	6
3. The History of the Term.....	6
3. 1. Divisions of the Inquiry.....	6
3. 12. The Term <i>Ice</i> , in Italy, France, England.....	7
3. 13. The Term <i>Cream</i> .....	8
3. 131. Not Used in Original Sense.....	8
3. 132. Primary Sense, and Derived Sense.....	8
3. 133. Terms to Distinguish Them.....	8
3. 134. <i>Cream</i> , a Mixture—Inclusion of the Term.....	8
3. 135. Dates of its Appearance in English.....	9
3. 136. Examples of Similar Derived Uses of Words..	9
3. 137. <i>Custard</i> as a Special Case.....	12
3. 138. Proof that the Term <i>Ice Cream</i> Contains <i>Cream</i> in its Derived Sense of a Mixture...	12
3. 14. The formation of the Compound Word, <i>Ice-Cream</i> .....	13
3. 141. The Nature of English Compounds.....	13
3. 142. Primary and Secondary Class Terms for Frozen Confections .....	15
3. 1421. Italian Terms .....	16
3. 1422. French Terms .....	17
3. 1423. English Terms .....	18
Under the head of <i>Ice Cream</i> ...	19
(a) Why <i>ice cream</i> and not <i>cream ice</i> ?.....	19
(b) Why <i>ice cream</i> and not <i>iced cream</i> ?.....	20
3. 2. Present Use .....	25
3. 21. Classification of the Evidence.....	25
3. 22. Dictionary Definitions .....	26
3. 23. Recent and Current Literature.....	26
3. 24. Familiar Use .....	27

## INDEX.

	Page
3. 25. Technical Use .....	28
3. 252. Housekeepers and Cooks..	28
3. 253. Experts in Cookery.....	28
3. 254. Trade Use .....	28
3. 26. Dialectal and Cant Uses.....	30
3. 3. Definition of American Use of the Term <i>Ice Cream</i> .....	30
I. Specific Use .....	30
II. Use as a Secondary Class Term.....	31
III. Use as a Primary Class Term.....	32
4. The Definition from a Legal Standpoint.....	32
Appendices:	
I. Citations for <i>Cream</i> in the Sense of a Mixture.....	39
A. Dictionaries .....	41
B. Quotations .....	42
1. From Continental Languages.....	52
2. From English Works.....	69
II. Citations for the Term <i>Ice Cream</i> .....	71
A. Dictionaries .....	72
B. Quotations .....	72
1. From Continental Languages.....	90
2. From English Works.....	90

## BRIEF ON THE HISTORY AND PRESENT MEANING OF THE TERM "ICE CREAM."

---

### 1. PURPOSE.

1. 1. The purpose of this brief is:

- (a) to trace the history of the term *ice cream*;
- (b) to determine its former and present meaning;
- (c) to frame a definition of its present use.

1. 2. Such an inquiry is necessary, for incorrect decisions are made as to the meaning even of words so simple and even by persons in authority, owing to ignorance of the facts of language, incomplete knowledge of facts in the individual case, neglect of those facts though known, or prejudice, due to some *ex parte* consideration.

1. 3. Typical errors are as follows:

1. 31. A modern use of a term is recognized and an older ruled out.

As if it were ruled that the word *currants* must be held only to mean the common garden fruit, and the original sense of "raisins" excluded.

1. 32. An older sense is recognized and a modern sense excluded.

As if *corn* were ruled to mean "grain in general" only, and not specifically maize in American use, wheat in South Britain, oats in North Britain and Ireland.

Or as if *barn* were held inadmissible in the sense "car barn," and admissible only in the sense of a structure for sheltering farm animals and storing farm products—a method of decision that, pushed to its logical extreme, would confine *barn* to a place for storing barley.

1. 33. The meaning of a word is in question, not because it is applied to different things or the same thing in markedly different uses, as in the previous cases, but because, as a class-term it includes a variety of different kinds of the thing it denotes, and it is necessary to determine the limits of that inclusion. In default of, or in despite of, historic and other evidence, judgment is rendered by arbitrarily referring to what is assumed to be the "apparent" or "obvious" or "accepted" or "original" or "physical" sense of the term, in place of determining the word's real meaning and use.

As if a question arose whether a new explosive, differing only in the use of another salt than saltpetre, had a right to be called *gunpowder*. The referee notes that it can only be manufactured in quarter-inch cubes, and affirms that as the word *gunpowder* calls for a powder, the new explosive cannot be called by that name—

thereby leaving out of account the whole history of gunpowder and the facts as to its present manufacture.

Or as if a referee should rule that plum-pudding must be made of plums, or that soda-water must be made of soda, or that biscuit must be twice-cooked, and the like.

1. 34. In a case similar to the last, judgment is rendered for *ex parte* reasons, which, whether well-intentioned or not, have nothing to do with the matter.

As if it should be ruled that the term *gunpowder* should apply only to gunpowder sold in particular tins of a kind favored by foreign buyers, or that the term *cake* should not apply to certain forms of cake as being too simple, or to other forms as being too rich.

1. 35. The examples given of erroneous decisions are purposely made obvious. But the danger of using such erroneous methods of decision in cases not so obvious is ever present, even among well-informed persons.

In the particular case in hand, the definition of *ice cream*, there is danger of committing the errors described under 1. 34, 1. 35.

These errors have been committed.

It has been asserted (cf. 1. 34) that *cream* in the compound *ice cream* means the oily part of milk, which it does not mean, did not mean when the compound was adopted in English, and has never meant since.

Further (cf. 1. 35), it has been asserted that use of the term should be limited to the confection as made with cream (in that sense) alone—ostensibly for the interests of the public, but in violation of the true meaning, and, it may be added, plainly to the prejudice of the public interest, if due consideration is given the pertinent facts.

1. 4. The only method possible of determining accurately the definition of a word is to review the history of its use from its origin to the present, and to take into account all the necessary facts relating to the thing it denotes in the past and at the present.

This is essential, whatever the difficulty, or however incomplete or confused the historic record. In the present case, the task is not difficult and the record is not incomplete or confused.

1. 41. Sources of information are:

(a) Standard dictionaries and encyclopedias, the definitions and statements in which represent interpretations of the historic record by experts.

(b) The historic record itself with a view of submitting a wider range of evidence, substantiating or correcting the findings of standard authorities, and carrying the final definition to fuller detail than is possible in the limited space available in works of reference.

(c) Evidence as to the present usage of the word and present practice as regards the thing it denotes derived from actual life.

1. 5. The inquiry falls into the following divisions:

(a) The history of the confection called *ice* or *ice cream* (2).

(b) The history of the term (3).

(c) Present meaning and inclusion, summarized in a definition (4).

## 2. HISTORY OF THE USE OF ICE CREAM.

2. 1. The use of snow and ice for preserving and chilling food and drink goes back to an indefinite antiquity. Iced beverages—wines or various fruit mixtures—have probably been used in Southern Europe without intermission from classical times to the present. The Oriental sherbet was known in the 16th century. The class of sweets known as “creams” were served chilled before the practice of freezing came in.

2. 2. The art of making solid or semi-solid sweets by freezing could not develop systematically before freezing mixtures of ice and saltpetre or common salt came into use for this purpose. Such freezing mixtures were early known—Bacon, for example, refers to them familiarly in his *Sylva Sylvarum* 1627—but this application of them was not, so far as the record shows, known to France before 1660 or England before the 18th century.

2. 3. *Italy*.—The art of making frozen confections originated in Italy. The date is uncertain. Earlier than elsewhere in Europe, cookery was there taken seriously, and processes and recipes were jealously guarded, so that the publication of cookery books does not appear until a late period. It is sometimes asserted, without authority, that the cooks of Catherine di Medici brought the use of ices with them to France in the 16th century, but the first certain knowledge of Italian ices comes with their introduction into France after the middle of the 17th century.

When information concerning Italian ices becomes available, the same wide range of mixtures appears, including water-mixtures and cream-mixtures, as appears earlier in the French and English record. As in France and England, these mixtures are used unfrozen and frozen. Typical of Italy is the extensive use of partly frozen beverages, especially lemonades, served in glasses at social gatherings like our mousse, or obtainable at the *caffè*. Lemonades so frozen are, in some parts, notably Sicily, often taken in place of morning coffee, during the summer.

The influence of Italy in devising new recipes, and new decorative features, has continued to the present day. This appears in the repute of Italian ices throughout Europe, the vogue of Italian confectioners in foreign countries, and continuous references in titles of and recipes in books on the making of sweets and desserts.

2. 4. *France*.—France learned from Italy to consider cooking as a fine art. Montaigne (*Essai LI*) records his amusement at hearing a “clerk of the kitchen” discourse gravely on the subtleties of his profession.

The introduction of ices into France, or their general use, dates from the establishment of the Café Procope, about the year 1660, by an Italian from Palermo (sometimes said, on less authority, to have come from Florence), named Procopio Cultelli or Coltelli. This café became noted for its ices. Incidentally, the son of the founder, M. Coltelli, known as Procope Conteau, 1684-1753, won

distinction as a physician and dramatic author. Much later Tortoni's (also established by an Italian) became famous in like fashion.

The historic record in France is both earlier and more abundant than in Italy. It shows clearly that the new fashion from Italy was less an impartation of new recipes than of a new process—what was learned was the application of this new process to beverages and desserts already long established in French use. (See 3.)

2. 5. *England*.—The influence of France upon England in respect to fashions in clothes and cookery is not a modern thing—though in the 18th century, and still more in the 17th, Paris was not the absolute arbiter that she became during the 19th. Italian influence upon clothes and manners became a scandal in the latter part of the 16th century, but this, with any other inclination to ape foreign customs, disappeared in the 17th century under Puritan influence. With the Restoration, French fashions were brought back by the English Royalists returned from France. A wave of moral reform followed, supported by the throne under William and Mary, but this did not lead to any effective hostility towards foreign fashions in such matters as clothes and cookery. French influence upon cookery is abundantly manifest in the number of cook-books from French originals during the 18th century.

How early the use of ices came into England cannot be determined with precision. Large private establishments might have had French cooks or have used French methods or recipes, without their becoming generally known—and a special practice might for some time become general before evidence of it would appear in letters, diaries, plays, fiction, or in cook-books. The earliest reference to ices yet found occurs in a letter of Lady Mary Wortley Montague written on October 1, 1716, to "Lady X—," "The company are entertained with ice in several forms, winter and summer." She writes from Vienna to a friend in England, who, it will be seen, is assumed to know what "ice" is. The use of ices in England may safely be assumed, to a limited extent, if not generally, in the first half of the 18th century. This assumption is confirmed by the date 1769, of the earliest use found of *ice cream*, in Mrs. Raffald's *English Housekeeper* (see Appendix 2B) where the manner in which the process of freezing is described proves that it was not a novel and unfamiliar thing.

While the use of creams as sweets has been common in England from the 15th century to the present day, the use of frozen creams, and ices in general, except as eaten at the confectioner's or ordered for special occasions, has been restricted by the scarcity of ice and the disposition to regard it as a luxury, rather than, as in the United States, as a necessity.

### 3. THE HISTORY OF THE TERM.

3. 1. The term *ice-cream* is a compound. It is necessary to determine

(a) The meaning and use of the element *ice* (3. 12).

(b) The meaning and use of the element *cream* (3. 13).

(c) The manner of, and reason for, the formation of the compound (3. 14).

(d) The relation of the terms *ice*, *ice cream*, in their subsequent English use as general terms, together with the adoption of subsequent secondary terms to define special classes or kinds included under these general terms (3. 15).

(e) The present meaning of *ice cream* in American use as determined by all available evidence (3. 2).

In all cases except the last, the foreign terms must be considered from which the English terms were derived.

### 3. 12. ICE.

3. 121. *Ice*.—The generic term for frozen confections in Italian has been from the earliest records, *gelato*, literally "iced (thing)." It is used of the confection considered in the mass, as in the question "*Che gelato avete?*" "What ice (*i. e.*, ices) have you?", or in speaking of varieties, *gelato di arancio*, orange ice, *gelato di crema*, vanilla ice, etc., with the plural, *gelati*, ices (of several sorts). Also, because of the mode of its formation, it could, without awkwardness, be used with the article or a numeral in the sense of a portion of ice, as *un gelato doppio*, a large sized ice, *cinque gelati*, five portions of ice.

3. 122. In German, a term similar in formation and use, *Gefrorenes*, appears. It was presumably modeled directly upon the Italian, while the alternative term *Eis* either developed naturally, or was adopted, by translation, from the French *glace*.

3. 123. In French, the use of a term modeled on the Italian was impossible, for French had long ceased to turn participles used absolutely into nouns. A noun *glacé* would have been as impossible as the turning of *iced* in English into a noun. The new confection was called simply *glace*, "ice," this new application involving what was but a natural extension of its old sense. An interesting consequence followed in that, while *glace* in its new use made necessary a plural *glaces* in the sense of "different kinds of ice," this plural was not approved as correct by the Academy until 1762, and the use of the singular with the article *une* (*une glace*, a kind of ice, or a portion of ice) was still regarded as incorrect or better avoided till well into the 19th century.

3. 124. In England, the term *ice* was undoubtedly adopted, by translation, from the French—the more easily as it would have been the term that would naturally have been used had the confection originated in England. The point is immaterial, but adoption, rather than independent selection of it, is assured by the fact that the confection undoubtedly came to England from France, and by the obvious dependence of 18th century English cook-books upon French. It has remained in use in England as a generic term. Its use in the plural appears early—but, curiously enough, its use with the numeral-article *an* cannot be found before the 19th century. Sir



James Murray asked for quotations for "an ice" in *Notes and Queries*, VIIIth series, IX, 3, 26, mentioning a friend who said he could distinctly remember when "an ice" was considered a vulgarism. Two correspondents supplied quotations for "ices", but this was not, of course, what Sir James Murray wanted. It had been customary to say "Will you take some of the ice (or "some ice")?" not "an ice", even though the ices were in individual portions or separate moulds.

### 3. 13. CREAM.

3. 131. *Cream*, in the compound term *ice cream*, was not used in its original, or primary sense.

\*The sense used was a transferred sense, peculiar to cookery. It had long been established in familiar use. The English record shows examples of it two centuries or more before the making of ices was practised.

\*The corresponding term *crème*, and, no doubt, the Italian *crema*, were similarly used in this transferred sense long before they were taken up into the terms applied to ices.

3. 132. The primary meaning of *cream* is the oily part of cow's milk, or that of other animals, which rises to the surface of standing milk, or is separated from the milk by skimming, or the modern "separator".

It is valued not only as the source of butter, but also as being more palatable than milk for eating with other foods or as an ingredient in cookery. The value set upon it is perhaps illustrated in the probable ultimate derivation of the word from Latin *chrisma*, consecrated oil used in anointing.

Various derived senses of the word originate naturally in the appearance and properties of cream—its application to the head of a fermenting liquid, the mantling foam of wine, the best part or refined residue of a thing (as in *cream of tartar*, the "cream" of a joke) and the like. None of these equals the derived sense employed in cookery in wide extent and importance of use, in virtue of which the word in this sense came to be treated with about the same freedom as if a separate word.

3. 133. The primary sense of *cream* will, hereafter, for clearness, be called "cream of milk", and the derived sense simply *cream*.

3. 134. The frequent use of cream of milk as a main ingredient in mixtures used in cookery led to the application of the word *cream* to such mixtures, or to any mixtures of like appearance or kind or use, or to substances resembling cream of milk, or similarly used.

The range of meanings under this sense of *cream* as a mixture includes:

(a) A mixture of cream of milk and other ingredients to give it body or flavor, such as eggs, starches, fruit or vegetable pulp or juices, essences, sugar, etc.

(b) A mixture of cream of milk, and milk, with other ingredients as in (a).



(c) A mixture of milk and other ingredients as in (a)—but without cream of milk except as contained in the milk.

(d) A mixture of like kind and use, made of similar ingredients,—characteristically eggs—except as not containing either cream of milk or milk.

(e) A substance made of nuts or grain resembling cream of milk in appearance, and used separately or in mixtures like the above.

This sense of *cream* still exists although somewhat supplanted by the word *custard* in its latest transfer of meaning.

To this brief will be found appended definitions of this sense of *cream* from modern standard dictionaries, with a selected series of citations in further proof and illustration.

3. 135. It must be noted that the date of the first appearance of the transitions of sense will not correspond in order of time to the several classes of mixtures given in logical order above—for direct transfer of the term at any time to any one of the classes was too easy and natural; furthermore, any of these might be in use a long time without chancing to be recorded in a work that has remained to us.

The earliest record we have of *cream* in these derived senses is of senses (c), (d), (e), in a work dating about 1430 (see list of citations). Citations for mixtures under groups (a) and (b) appear in the 17th century, but undoubtedly such mixtures go back centuries earlier.

How well established the general cookery use of *cream* was by the beginning of the 17th century may be illustrated by Bacon's use of it in connection with the newly-introduced grain, maize, of which he says, in his *Sylva Sylvarum* (1627), 49:

"*Indian Maize* hath (of certain) an excellent Spirit of Nourishment, but it must be thoroughly boiled, and made into a Maiz-cream like a Barley-Cream. I judge the same of Rice, made into a Cream."

In 54, he recommends using "Cream [of milk], or Almond or Pistacho-milk, or Barley, or Maiz Cream" as a partial substitute for butter or fat in "chuets", which were one of the earlier forms of mince pie.

3. 136. Derived senses of words are innumerable in every language, and their development is one of the most common ways in which the vocabulary is enlarged. To reprehend them, or to refuse to recognize them, if established in general acceptance, is wholly unjustifiable.

A few examples of similar derived senses may be cited in illustration, the list (which might be indefinitely extended were our vocabulary in general drawn upon) being confined to words denoting foods, or connected with cookery:

*Meat*: The original sense was food in general. This sense is still used archaically and in certain locations. But the derived sense is the one that is recognized.

*Flour*: Originally the same word as *flower*. Applied to any finely ground grain, then specifically flour of wheat, then to any substance

resembling flour because ground fine, *e. g.*, "manioc flour", "potato flour", "flour of mustard", "meat flour", "blood flour", "saltpetre flour", "sulphur flour".

*Meal*: Coarsely ground grain, hence "linseed meal", "beef meal", "blood meal", "bone meal", "calf meal", "bee meal", "gunpowder meal", etc.

*Salt*: Originally "common salt", extended to all kinds of salts.

*Milk*: Cow's milk, or the milk of other domestic animals; hence, a substance or mixture used in cookery, such as "milk of almonds", or "pistachio milk"; or used in medicine or the arts, such as "milk of lime", "milk of sulphur", "milk of roses", "milk of wax", or a milk-like substance in plants such as the "milk" of the cocoanut, or of various "milk-bushes", "milk-trees", or other plants.

*Butter*: Originally and still, a familiar comestible and ingredient used in cookery, made from milk-fat—but also applied to mixtures of butter and other substances, and to substances or mixtures used like butter or resembling it, such as "almond butter", "apple butter", "mace butter", "shea butter", "bean butter", "fruit butter", "peanut butter".

*Bean*: One of the various garden beans, hence, other seeds of like appearance, such as the "buck bean", "coffee bean", "locust bean", "Tonka bean".

*Currants*: Originally, a small variety of grape; transferred to the garden fruit.

*Soda*: Originally, and still, the carbonate of soda, but extended to the bicarbonate, "baking soda", and various compounds of sodium, as "caustic soda."

*Ale*: Originally, and still, a fermented alcoholic liquor; also, a beverage made by a mixture of this liquor and other ingredients, as "buttered ale"; also extended to various non-alcoholic beverages, as "ginger ale."

*Beer*: Originally equivalent to *ale*, then distinguished from it, when "hops and heresy" came to England (16th century) by being hopped; now the inclusive class-term for all kinds of malt liquor, though also applied, as a secondary class-term, to distinguish the heavier or darker malt-liquors. Also, a beverage made by mixture, as "buttered beer". Also extended to various non-alcoholic liquors, as "birch beer", "spruce beer", "nettle beer", "treacle beer".

*Brandy*: Originally, and still specifically, spirits made from wine or grapes, but extended to spirits made from various other fruits, etc., as "blackberry brandy", "cherry brandy", "peach brandy", "corn brandy".

As *cream* in its transferred use comes to mean not only an article of food, but also a characteristic form of preparing it, a further list of examples may be given in which other words denoting forms of serving food have had their meaning transferred and extended.

*Bread*: Originally and still, specifically, a prepared article of food, made of meal or flour, wetted, kneaded, generally "raised", and baked; hence, widely transferred to various preparations of meal or flour prepared more or less differently. Also applied to other basic

substances prepared or eaten like bread, such as "bean bread," "potato bread", the "native bread" of Australia; in Anglo-Saxon use, in the compound "bee-bread", honey-comb; in later use, the pollen, or pollen and honey, eaten by nurse bees.

*Loaf*: Originally, and still in local use, bread. In general use, a special shape of bread. In transferred usage, in cookery, a dish made by using a loaf as a casing, as "oyster loaf", "mushroom loaf", also, food prepared in the shape of a loaf, as "veal loaf".

*Paste*: Originally, flour and water, or milk, kneaded to a soft dough as used for various purposes in cookery—later, this compound with shortening as used in making pastry. Transferred to such mixtures as variously blended with other ingredients into sweets. Hence transferred to mixtures of similar consistency made of fish, etc., used as relishes, such as "anchovy paste", "bloater paste", "shrimp paste". The use of the word to denote mixtures of like consistency outside of cookery (as *paste* for sticking things together) is derived from the use in cookery.

*Pie*: Originally, a dish of meat or fish cooked in pastry; transferred about the 16th century to sweet dishes of fruit, creams, etc., similarly baked in pastry. Compare *tart*, *pudding*, *jelly*, *blanc-mange*, *custard*.

*Tart*: Of similar history, except that tarts filled with fruit appear early beside tarts filled with meat, fish, cheese, etc. The word later became entangled with *pie*, the two being differently differentiated locally.

*Pudding*: Originally and still, a dish made by stuffing the stomach or entrails of an animal with various mixtures of meat, meal, seasoning, etc., and boiling the whole. Later, a dish made by boiling in a bag animal or vegetable mixtures enclosed in paste (see *paste* above). Later, such preparations, cooked in a dish by baking. Now, specifically, beside the older uses, a sweet of one of a wide variety of mixtures, cooked, or uncooked.

*Plum pudding*: Originally, a pudding with prunes as a main ingredient; later (from the 17th century) with raisins in the place of plums; hence, the common use of the word *plums* to denote raisins.

*Cake*: Originally, bread formed in a special shape and turned while baking; in local use, oat bread so treated; also widely extended to preparations of flour or meal, cooked in a flattish round shape, as "buckwheat cakes," or foods not made of flour or meal, so prepared, as "potato cakes", "fish cakes". Also widely extended as the name of a shape in application to other things than foods, as cakes of soap, tobacco, mud, manure, dynamite, etc.

Also, by transfer, fancy bread, prepared with the addition of various ingredients to give flavor and "richness." Widely extended to preparations similarly used not necessarily containing flour and not confined to a particular shape or mode of baking, such as the word *cake* originally predicated (consider the common phrase, a "loaf of cake").

*Cheese-cake*: A cake or tart with a filling of cheese, eggs, etc.

Still so made in the 19th century, but already by transfer, in the 18th century, a cake or tart with a filling of various creams, used as a sweet.

*Jelly*: Originally, a food made from the gelatin of meat; later, a sweet made by boiling and cooling fruit or vegetable juices with sugar.

*Blanc-mange*: Originally a rich meat-pie made with cream of milk, eggs, sugar, nuts, etc.; later, a sweet made with gelatin or isinglass; later, a sweet made simply with flour or milk, etc.

3. 137. *Custard*: This term, which belongs in the above list, demands special attention because of its encroachment in its later history upon the word *cream*. Originally it meant (1) a dish of eggs, cheese, and sometimes meat, baked with a crust; (2) a pudding made of eggs and milk and flavoring, etc., baked. Later (3) the word came to be applied to a mixture of this kind which is brought to a boil, but not baked, so that it remains fluid. This remains its ruling sense, though it is loosely applied to such mixtures used without scalding or boiling. Sense (1) remained certainly to the middle of the 19th century and may still be in use locally. Sense (2) is in common use, being specially indicated by the phrasal compound "baked custard". Sense (3) developed in the 18th and 19th centuries and came into conflict with, and partly superseded, the word *cream*, as denoting a mixture of the same kind, and, as often, similarly scalded, or as made with cream of milk or milk scalded before other ingredients were added. Hence its modern use in the phrase "frozen custard", referred to below.

3. 138. It remains to prove that the term *cream* in the compound *ice cream* was used in its transferred sense of a mixture, and not its primary sense of cream of milk.

(a) Ices of the cream kind have never been made of cream of milk alone. A mixture is and has always been used. If the basic ingredient is cream of milk only, which is exceptionally the case in the whole history of the product, there must be the addition of sugar, fruit pulp or juices or essences, as flavoring. These additions at once predicate the transferred sense of the word, and not the primary.

(b) To the French and English (and doubtless the Italian) cook of the 17th or 18th centuries, creams as mixtures were a familiar fact, and the word as a class-term for a wide variety of mixtures had become separated from its original sense. The new process merely involved taking such familiar mixtures and freezing them.

We may find difficulty in apprehending this, as the word *cream* in its transferred sense remains in somewhat limited use in special connections such as "cream sauce", "Spanish cream", "cream cake", "creamed fish" and the like, the word *custard* now largely taking the place of the former general use of *cream*. But at the time ices came in, this was not the case. At that time *ice cream*, ice of the *cream* variety, was simply one of the many well-known creams frozen and made into the new confection, "ice". It was no more conceived of as "cream of milk frozen, or made into ice", than

"layer cake" is to our minds a special form of bread dough treated in a particular way, instead of simply cake made in layers with a filler between.

(c) In the third place, before the freezing of creams came in, the various creams were characteristically served cold, as are their modern representatives today, the soft custards. Directions that they shall be chilled appear in English, French, and (as soon as they are available) in Italian recipes. A noteworthy quotation may be cited here. In the *London Gazette* of 1688, No. 2383/2, appear the words, "All such Fruits, Iced Creams, and such other Varieties as the Season afforded." This does not refer to *frozen* creams (if it did, the point under consideration would be established at once), as other references to frozen creams would appear before the much later date when they are common (after 1750). But it does show the practice of chilling creams, and makes clear how natural the transition from iced creams to frozen creams was. Note the use of the plural, as illustrating the frequent and familiar use of various mixtures.

(d) When recipes for frozen creams appear, the creams used are not merely of the same general character as the creams used before the practice of freezing came in, but are often practically the same.

(e) Further, after the practice of freezing came in, the recipes for creams generally contain the suggestion that, if preferred, they may be frozen. An interesting illustration is the Italian use of frozen *blanc-mange*.

3. 139. It follows from this evidence that *cream* in the term *ice cream* is *cream*, a mixture, and not *cream* in its original sense of cream of milk.

The manner and reason of its use in the compound falls under the discussion of the compound as a whole which follows.

### 3. 14. THE COMPOUND.

3. 141. The classification of compounds—whether according to form (as combinations of noun with noun, noun and verb, adjective and noun, etc.) or according to the sense-relation between the elements (as of union, e. g. *copper-zinc*; place where, e. g. *country-house*; time when, e. g. *day-dream*; place whence or whither, e. g. *jail-delivery*, *garret-stairs*, etc., etc.)—has been treated by many scholars, for example Bruggmann, Tobler, Wilmanns, Maetzner, Wundt, Koch, Sweet, Sayce, Kellner, Jespersen, and, most recently and fully, in relation to English, by Bergstens in his *Compound Substantives in English*, Upsala, 1911.

In a true, or close, compound noun, made up of two nouns, the two nouns are simply put together to express some idea into which they both enter. According to the closeness of the relation between them, so that they are felt as forming one word, or the frequency of their use in this way together, the two elements of the compound are written together or apart. Often words written separately are as truly compounds as if written with a hyphen or solid. There is an



indefinite gradation from such close compounds as *honeycomb* or *stargazer* to such phrasal compounds as "apple pie" or "city point-of-view." Attempts to define the nature of the relation between the elements in terms of grammar are largely fruitless so far as formulating any general rules are concerned.

For example, in the loose compounds *stone wall*, *cannon ball*, are *stone* or *cannon* adjectives or nouns? At a meeting of the Philological Society in 1881, Sweet and Sir James Murray said they were nouns used as mere adjuncts, Morris and Furnivall, both eminent philologists, affirmed them to be adjectives. Jespersen (*Mod. Hist. Gram.* 1914, II. 13. 11 ff.) argues that such elements of compounds are felt as adjectives. Bergsten argues that they are not truly adjectives, even though they can show one or another quality of adjectives on occasion, such as taking an adverbial modifier ("a wholly city point-of-view").

Bergsten is correct, but does not go far enough. The truth of the matter is that nouns as used are neither nouns or adjectives—they are nouns by origin, but, as so used, they become something neither noun nor adjective, namely elements in a compound. Has *pen* in *pen drawing* become an adjective, or is it felt as an adjective? It is, and remains, a noun in origin used in short-hand fashion for "made with a pen." The fact that in certain cases nouns so used may be used in the same way as adjectives placed before nouns are used does not prove anything with regard to innumerable compounds, in which the first elements in no wise are felt to be, or behave like, adjectives.

The simple fact is that English readily coins compounds by taking a word, noun or other, and placing it before another word. The word so placed stands for a whole phrase. The user has a clear apprehension of a relation between the two which he intends to express, and believes that this relation will be expressed to his hearer or reader. In some cases, the relation is so complicated, and the ellipsis of words understood is so difficult, that definition may be necessary, as, for example, such cases as *horse-power* or *foot-pound*. But in multitudinous cases, the combination is made, and the word is uttered and understood by the hearer, without any conscious reasoning whatsoever.

As English freely coins compounds with every degree of looseness and the widest freedom as regards the nature of the relation, it is not possible to say except in the broadest possible way that such and such types of compounds are English, and such others are not English. Great numbers of compounds may be ranged together as alike in form, and may seem to establish a "rule" or "type", but further examination readily discloses numerous partial or complete exceptions, which show that no "rule" really exists, and that the only factor in the matter is the instinct of the user with reference to the relation he means to express.

This applies even to the most well-marked natural tendencies of the language. For example, the natural order for compounds in English is, undeniably, for the class-term to come second, and the

defining or particularizing term to come first—thus in *coal oil*, oil is the class-term, and the word coal means “of like origin with coal,” “that comes from deposits of coal.” But if, because of the meaning and relation of the terms involved, either can come first without confusion, or if a native model or a foreign model for the compound exerts its influence, English will readily abandon what might seem to be its well-marked “rule.” The freedom of English in this respect, its unembarrassed directness and decisiveness in sensitively obeying natural instincts, in place of subjecting itself to rigid conventions, has often been commented upon with admiration by foreign scholars from Grimm to Jespersen.

The facts stated above are pertinent in the present inquiry, because the compound word *ice-cream* is an apparent exception to a well-marked tendency in English compounds in one regard, and is a real exception, though one of a large class, to a well-marked tendency in phrasal compounds in another regard, that of its form.

3. 142. The class-term for frozen confections in their wide variety was, in the various languages concerned, “ice”—Italian *gelato*, French *glace*, English *ice*.

This term might often not be used, however, in the name given to special kinds of ice for two reasons:

(a) Many varieties already had special names, namely, the beverages and creams already in use. The old names were naturally continued as special names.

(b) New materials, methods, recipes necessitated the invention of special distinguishing names. A large number of secondary class-names and individual names result.

Old class-names (like *cream*) for a time or in limited use tend to supplant *ice* or to find a place beside it, reducing it to a limited meaning as the name of a special class, but in most countries, *ice* has retained its sovereignty as the inclusive class-name for frozen confections of whatever kind.

Italian has always used *gelato* as the inclusive term; French has always used *glace*; in England *ice* finally overcame *ice cream*; in Germany, *Gefrorenes* covers both water ices and frozen creams; in America, in spite of continued foreign influence,—the influence of English *ice*, and of French, Italian and German cook-books, cooks, and confectioners, and the natural tendency in such matters to assume foreign superiority, or borrow foreign terms as indicating novelty and fashionable approval—*ice cream*, because of the general preference for ices of the cream variety, has become in popular use the general inclusive class-name.

A review in detail of the terms used in Italian and French is here necessary to show the general development and explain the development of the terms used in English.

## 3. 1421. ITALIAN TERMS.

*Gelato*: The general class-name (cf. 3. 12).

*Granita* and *gramolata*: A subordinate class-name for a class of ices that developed by freezing beverages made of fruit-juices, especially lemonade, to a semi-soft and granular (whence the name) condition; served in glasses at social functions and in the morning at *caffes*.

*Sorbetto*: Originally, a frozen beverage like the *granita*, but distinguished from it by its wider range of ingredients other than fruit-juices, its smoother consistency, and as having more sugar. In this way the inclusion of the term blends vaguely with *granita* on the one hand and with the general family of *gelati* on the other, including *crema*, or creams. The characteristic feature of *sorbetti* is that they are semi-frozen.

*Gelato di crema*: Literally "Ice made of a cream". The term applies properly to all frozen creams, as *gelato di crema alla vainiglia*, *gelato di crema al pistacchio*, "ice of vanilla cream", "ice of pistache cream". The phrase by itself means "vanilla ice cream", for the reason that *crema*, by itself, came to mean, among the various creams, a cream flavored with vanilla, just as our *custard* (as used for earlier *cream*) might have come to stand for "vanilla cream", because of the almost invariable use of vanilla as a flavoring. Other creams, unfrozen or frozen, are usually called *crema* with a specific term added (see *crema* below) or *gelati* with a specific term.

*Crema*: A subordinate class-name, including generically the various "creams" used both frozen and unfrozen. The full term would be *gelato di crema*, with additional specificizing term, as noted above, but *crema* suffices by itself, unless it is desired to make clear that the frozen form is intended. Examples are *crema vergine* (a special mixture variously flavored), *crema al caffè*, *crema al cioccolato*, etc. Practically all the creams may be eaten either way, unfrozen or frozen to a preferred degree of hardness. The tendency to cite the practice of foreign nations appears even in Italy, where the making of ices started, as *crema francese alle mandorle*, *crema francese d'albicocche*, "French almond cream", "French apricot cream", *bavarese alla milanese*, "Bavarian cream in the Milanese fashion", etc.

*Ghiacciato*: The participial adjective *iced*, added to confections having a special name of their own, as *zabaglione ghiacciato* (wine, eggs, sugar, spices, etc., forming a punch which is beaten and iced or frozen).

*Spongata*: An ice made of beaten cream of like character with the Spanish *espuma* (froth), French, hence English, *mousse* (literally, froth, foam).

*Plombiere*: An elaborate ice made with whipped cream, nuts, candied fruit, or the like; perhaps derived from French use.



## 3. 1422. FRENCH TERMS.

*Glace*: Literally *ice* (cf. 3. 12). This, in French, is the gen inclusive term for all "ices". Use of the participial adjective *glacée* appears also, to permit a secondary specific term to come first, as in *crème glacée*. But *glace* is the primary class term. The official authority, the *Dictionary of the French Academy*, includes under *glace* fluids frozen and taken for refreshment, such as *glace à la crème*, *à la vanille*, *au citron*, *au chocolat*, etc. (i. e. ice of the cream kind, ice with vanilla, lemon, chocolate flavoring, etc.). So also cook-books. To cite examples, *Le Cannameliste Français*, 1768, includes under ice "frozen fruits, whipped eggs, mousse, cheeses (*fromages*), all kinds of frozen things of which we imitate the form"; the *Nouvel Manuel de Limonadier, Glacier, Chocolateur, et Confiseur*, 1851, says that glaces are confections made of different substances, vegetable juices, fruit juices, creams (*des crèmes*)".

*Glacée*: Literally "frozen", used when prominence is to be given to a material or mixture used, or to the form used. For example, *fruits glacés*, *crèmes glacées* (in place of *glaces aux fruits*, *glace à la crème*), *fromages glacés* ("iced cheeses", that is, ices shaped like cheeses).

*Crème*: A cream-mixture—of any of the sorts in use before ices or invented later—as used unfrozen or frozen. When frozen, the confection may be termed *glace à la crème*, or, to specify this particular kind of ice, with the distinguishing term put first for prominence, *crème à la glace*, cream-mixture served as an ice, or *crème glacée*, cream-mixture frozen. If the freezing may be taken for granted, simply *crème*, with a further specific term, may be used, as *crème d'abricots*, *crème de citron*, that is, the same names as are used for such creams when unfrozen.

*Neige*: Literally, "snow": apparently a soft ice, especially, though not exclusively, a water ice, so named merely fancifully, as no special ingredients or manner of freezing seem to be indicated.

*Fromage*: Literally "cheese": An ice moulded like a small cheese, as *fromage de café*, *fromage de fraises*, "coffee cheese", "strawberry cheese".

*Tortue*: Literally, "tart", indicating method of serving.

*Canneton*: Literally, a mould, applied to the mould or form, and hence to the mass of ice moulded, as we use "mould of ice cream". In French, used commonly with a specific phrase, *de chocolat*, *de fraises*, *de framboises*, as an accepted title, while in English "mould of chocolate", "mould of strawberry", "mould of raspberry" can only be used colloquially.

*Sorbet*: From Ital. *sorbetto*, sherbet, and similarly used for a soft ice, half a beverage, especially water ices, but also cream ices similarly used.

*Mousse*: An ice of whipped cream of milk, characteristically frozen without stirring.

*rappé*: Partly frozen water ice, served soft and with a granular consistency like the Italian *granita*.

*Plombière*: A specific name of indefinite inclusion added to *glace* to denote more or less elaborate ices made with the addition of whipped cream, nuts, candied fruit, etc.

Two points in relation to the terms used in French demand special note.

(1) The use of *crème* is precisely similar to its use in English. It means a mixture, not specifically cream of milk, for it is used in the plural (*les crèmes*), with *une* ("a cream"), and with the demonstrative *cette* ("this cream"), and recipes for these mixtures state that they may be used either frozen or unfrozen. Cream of milk or milk need not enter into such mixtures; but in the case of a fruit mixture, eggs at least do, or it is not a *crème*, but a *glace à l'eau* (see below).

(2) The citations given below explain the origin of our term "water ice". Just as creams existed before frozen creams, so also beverages made of fruit juices—*eaux délicieuses*, literally "delicious waters". The term *eau* in French means not only water, but also juice of fruits or vegetables, and had also a wide application in professional medical use, and in the medicinal and culinary art of the expert housekeeper. The old use appears in French *eau de vie*, *eau de Cologne*, and in English "strong waters", "rose water". In English *soda water*, the use of *water* is derived from "mineral water", and its analogues; but the term as a whole has developed a wide range of inclusion, paralleling in a way the extension of "cream" and "water".

The word *water*, in the same sense of beverage, might denote fruit juice, of one fruit or of several mixed, with or without water. In Ribon's *L'Ecole Parfaite des Officiers de Bouche*, 1737, is an article telling how to freeze these *eaux délicieuses* into what we would call "water ices". The *Cuisinière Bourgeoise* of Toppens, 1759, says "in summer you take *eaux d'été*, beverages appropriate to summer . . . place them in moulds, and, as they freeze, you take care to stir them from time to time". Cardelli in 1851 writes: "We distinguish between two kinds of mixtures for ices. These are fruit ices of the water kind (*glaces aux fruits à l'eau*) and ices made from creams (*glaces à la crème*). Fruit ices are made of sugar, water, and different fruit flavors . . . Ices of the cream kind are made of cream of milk, or of milk, of eggs, of sugar, and of different flavors."

### 3. 1423. ENGLISH TERMS.

The English terms are directly modeled on the French. The French terms which might serve as models were:

*Glace.*

*Glace à la crème.*

*Crème glacée.*

*Crème à la glace.*

The last had no general currency. It represents, as over against *glace à la crème*, the natural tendency to waver between giving precedence to the old confection, *crème*, now used also frozen, or the new confection, *glace*, when made of the old confection *crème*.

*Ice*: Used to represent French *glace*, and retained as a general term to the present day in England (see 3. 12), and, to a limited extent, in America.

*Cream*: The old use of *cream* for the various creams remains, and recipes commonly state that they may be used frozen or unfrozen. But the absolute use of *cream* for frozen cream, as in French *crème d'abricot*, etc., short for *glace à la crème d'abricot*, etc., is not common in English. Ices made from creams are called *ice cream*—"vanilla ice cream", etc.

*Ice cream*: (as a specific term): The English equivalent of French *glace à la crème* and *crème glacée* is ice cream.

In taking up the discussion of this term, it must be noted that French, in forming phrasal compounds, puts the general class-term first, the distinguishing or specializing term second. English does the reverse of this—except in a few cases like *court baron*, *gum tragacanth*. The normal order puts the class-term second, the term denoting kind first; for example, *mud-guard*, a guard that keeps off mud, *ice-pick*, a pick to pick ice, *pea-soup*, a soup made of pease.

In *ice cream*, we have apparently a reversal of this order. A class-term of what seems wider inclusion comes first; a class term of somewhat narrower inclusion second.

The exception is, in reality, only apparent, and the reasons for the order may be readily shown:

(a) The case is one of those where, both terms being class-terms, there is the possibility of either being taken as the main class-term and the other as the specificizing term. The two terms, when the compound was formed, were evenly balanced, for *ice* in its new sense of a confection was not felt to be a term of wide inclusion. The compound might have been either *ice cream* or *cream ice*, so far as an adequate expression of the idea was concerned.

Which of two possible alternatives will be used will depend on the shade of emphasis in the user's mind. Examples may be given of similar cases in which both possible forms had currency for a time before one drove the other out. Bergsten (*Compound Substantives in English*, p. 57) gives a number of examples, to which others may be added:

bell-glass  
bug-bear  
comb-card  
cylinder-axis  
hook-bill  
jaw-foot  
lady-cow  
pike-hammer  
twin-brother

glass-bell  
bear-bug  
carding-comb  
axis-cylinder  
bill-hook  
foot-jaw  
cow-lady  
hammer-pike  
brother-twin

spring-head	head-spring
screw-jack	jack-screw
man-servant	servant-man
maid-servant	servant-maid
boy-scout	scout-boy
bachelor-girl	girl-bachelor
Queen-mother	mother-Queen
Empress-Dowager	Dowager-Empress
apple-john	john-apple
brandy-cherry	cherry-brandy
laurel-cherry	cherry-laurel
leaf-gold	gold-leaf
lion-ant	ant-lion
oak-holm	holm-oak
petre-salt	salt-petre
sugar-candy	candy-sugar
ledger-ambassador	ambassador-ledger
bed-rock	rock-bed
fossil-cork	cork-fossil
mole-rat	rat-mole
nettle-hemp	hemp-nettle
plate-silver	silver-plate
cake-yeast	yeast-cake
gall-nut	nut-gall
rock-soap	soap-rock
rock-salt	salt-rock
powder meal	meal powder

How naturally these alternatives may arise appears clearly in such cases as *bill-hook*, *hook-bill*, where both elements mean a tool, and it is indifferent whether you say a bill of the hook-kind, or a hook used like a bill—or in such cases as *gall-nut* over against *nut-gall*, or *salt-rock* over against *rock-salt*, where either element may have precedence over the other for the moment. Others are not so clear, till examined into. A cordial made of cherry juice or pulp gets to be called *cherry*, and as made with brandy, *brandy cherry*, while on the other hand, brandy flavored by soaking cherries in it is called *cherry brandy*, and the two are used interchangeably for a while; *brandy cherry* may very possibly still be in use dialectally.

Of the two possible compounds in English, *cream ice* might have existed, indeed perhaps did. It is in use at present both in England and this country, but only in cook-book and trade use as a convenient parallel term to *water ice*. There is no evidence of its early use found in the record, and it may, with certainty, be regarded as a recent coinage.

(b) That *ice cream* should have developed rather than *cream ice* is readily explainable. Had the mixtures used, as well as the process, been new, *cream ice* might have been the dominant form. But in England, as in France, the word *cream* was familiar for the large

family of *creams*, which were by the new process made into the confection *ice*, in place of being merely chilled. A natural model for the new term existed in the names of these creams—"almond cream", "pistache cream", "lemon cream", hence naturally, *ice cream*. No difficulty was felt in the absence of a term denoting kind or flavor, for *cream* was used absolutely as we use *custard* in such phrases as "To make custard", "Will you take custard?", "To have custard for dinner."

Precisely the same influence in France led to the terms *crème glacée* and the rare *crème à la glace* beside *glace à la crème*. The influence of French *crème glacée* must also be reckoned with as influencing the English *ice cream*.

The reason for the order of the elements being clear, it is next necessary to explain the form of the first element—why *ice cream* and not *iced cream*.

Loose or phrasal compounds of the type participle plus noun are so numerous in English—*cut glass*, *burnt sugar*, *spun-yarn*, *cast-iron*, *fretted-work*, *moulded ware*, etc.—as to establish a fixed and powerful formative type. Unquestionably, if one were consciously to invent a term in a case like the one under consideration, one would naturally use this type—or even spontaneously and unconsciously, if one's mind were fixed upon a process employed and one wanted to stress that process—so, for example, a chemist might say to a class, "This is not smelted iron, it is sublimated iron" or "This is not cast or wrought iron, it is crystallized iron".

But numerous as such syntactic compounds are in English, they do not form the only, the necessary, or the inevitable type, in expressing such an idea, when the coinage is involuntary and unconscious—even in cases where one might think the desire to lay stress on the process might be instinctive and uppermost in the speaker's mind. For it may be quite as natural to think of the agency used, or state, or shape reached in the course of, or as a result of, the process concerned—in which case the result will be not participle plus noun, but noun plus noun, as in "open-hearth steel", "pig iron". In the special case, any one of a number of factors may subordinate the idea of the process, so that the use of the participle, seemingly so natural, does not take place. In order that it may be clearly realized that such compounds are perfectly natural, and have been in the past and are at present used frequently in English, a list of illustrations may be given—especially as, in individual cases, such compounds are sometimes regarded ignorantly as incorrect, and are "corrected" by would be purists:

*Ice water*: not "short" for "iced water", but "water of ice", "water from ice", "water with ice in it", "water cooled by ice". Often regarded as "incorrect", the use of *iced water* being urged as the logical and correct term.

*Brandy cherries*: "cherries in brandy"; used beside *brandied cherries*, which is now the recognized term.

*Jelly blood*: "blood that has become a jelly"; equivalent to *jellied broth*.

*Lump sugar*: "sugar made into lump form".

*Loaf sugar*.

*Layer cake*: this would be equivalent to *layered cake*, if an active verb "to layer" in the proper sense existed. Note the free simplicity of the formation, *layer* being used to indicate briefly a complicated process.

*Butter ale*: used beside *buttered ale*.

*Buttermilk*: "milk" left when the butter has been separated from the cream by churning, or, now, whole milk converted to a beverage resembling the original buttermilk by addition of a ferment.

*Butter toast*: used beside *buttered toast*.

*Jam tart*: i. e., filled with jam.

*Roll bread*: i. e., in the form of a roll.

*Roll brimstone*.

*Roll candle*.

*Roll tobacco*.

*Bottle ale*: used beside *bottled ale*, the stress being here on the ales being in bottles, instead of bottled from the cask.

*Meal malt*: "malt reduced to meal".

*Meal powder*.

*Plug tobacco*.

*Powder beef*: beside *powdered beef*.

*Powder sugar*: beside *powdered sugar*, the sense here being "sugar in powder form".

*Loaf bread*.

*Brick oil*: oil with brick in it, formerly used as a drug.

*Button mushroom*.

*Bead amber*.

*Mince meat*: used beside "minced meat", but not "short" for it, the sense being "meat reduced to a mince".

*Soap ashes*: ashes for making lye for making soap.

*Bean ore*: ore in a form like beans.

*Pea coal*.

*Egg coal*.

The list might be almost indefinitely extended.

A special note is necessary on the cases in which a participle plus noun phrase appears beside a noun plus noun phrasal compound. Where such pairs appear, the error is sometimes made of supposing that the latter is necessarily derived from the former. It might be so in an individual case, but is by no means necessarily so in every case. The point is touched upon because the *New English Dictionary*, after defining *ice cream* adds "(Earlier term, *iced cream*)". If this is intended to mean that *ice cream* was derived from *iced cream*, by a dropping of the *d*, it is an error. If it means that there were two alternative forms, and that *iced cream* was the earlier, it is, so far as appears from the record, also an error, for they appear simultaneously. If it means that there has also been use of the form *iced cream*, the statement is correct in substance but not in form, as *iced*



*cream* does occur, but very rarely indeed, and plainly as a translation of French *crème glacée*. The note should read "Also, in former use, *iced cream*."

The list of examples makes it clear why the term adopted took the form *ice cream* and not *iced cream*. Two conceptions had to be combined to form a distinctive class-name. One was the old and familiar conception of the various *creams*. The other was the new confection termed *ice*. The assumption uppermost in the mind of the users was not "a cream that has been iced" but "a cream made into ice". From this standpoint, *cream* is naturally the class-name, and *ice* the defining term. There are ordinary creams on the one hand, and ice creams on the other. The feeling is much the same as in *liqueur brandy*, a brandy designed to serve as a liqueur, or as if, on the introduction of *soufflés*, a housekeeper, with the general class of custards or puddings in mind should think of "soufflé custards", or "soufflé puddings", as a new class.

*Ice cream* (as a generic term): Not only was *ice cream* preferred over a possible *cream ice*, but it also came to be used as a primary class-term, beside, and used in the same way as, *ice*. This is wholly natural, for the reason that *cream* might denote a mixture with no *cream of milk* in it or even *milk*. In French use, a *crème*, to be so called, had, apparently, to have in it at least eggs with fruit-juice or other ingredients. But in English no such distinction seems to have stood in the way. In the 18th century, the term *ice cream* was used of any kind of ice. Thus, in 1786, in the noted cookery-book by Mary Smith, *The Complete Housekeeper and Professed Cook*, *ice cream* is the general term under which are grouped raspberry ice made with cream of milk, and orange, peach and apricot, all of them what we would call "water ices". So also in 1791 Miss Frazer includes under *ice creams*, apricot, pineapple, and peach water ice.

In England, *ice cream* continued to be used as a primary class-name, beside *ice* and *ices*, but never succeeded in usurping priority over *ice*, owing to the fact that both terms were used as secondary class-names (*ice* tending to mean *water ice*), and also to the fact that use of frozen creams was less common than the use of water ices. In America, the conflict for priority was decided the other way. Starting from the early use of *ice cream* to cover any kind of ice, the general use of frozen mixtures containing cream of milk or milk gave this term the advantage, so that in America it is the accepted primary class-term—one has "ice cream" for dinner, one goes to get "ice cream" at a confectioner's, though in both cases the order may be for what are now called specifically "water ices". This is a fact, which will at once be recognized, though not noted in American dictionaries (see discussion of these definitions below, 3.22).

*Water ice*: The development of the French phrase *glace à l'eau* has been explained above. Though it appears in 18th century French works it has not been found in English works of the 18th century.

Presumably its use in English in the 19th century grew out of a necessity to particularize special classes by secondary class-terms, as

the term *cream* began to lose its wide and general use in the sense of a mixture. This was due to the encroachment of *custard* in its newly developed application to many mixtures earlier called *creams* (see above, 3.137). *Ice cream* partly ceased to cover naturally all kinds of ices, and a tendency rose to specialize *ice* in a secondary sense to mean ices made with fruit-juices and other watery mixtures, and to understand *ice cream* as meaning specifically ice made with cream of milk or milk mixtures. This is often the understanding in America at present. But to use a general term as a secondary term is not specific enough. In England, the adoption of *water ice* provided parallel secondary terms, *ice cream* and *water ice*, under the general class-term *ice*. In America, the general class-term *ice cream* was used also as a secondary term for cream of milk and milk mixtures, and *water ice* came into use to parallel the secondary sense.

*Frozen custard*: This further secondary sense, the use of which is very common in America, rose in consequence of the modern development of the word *custard*, covering, and in part supplanting, the older word *cream* (see 3. 137).

*Custard* specifically denotes a dish made by scalding milk and pouring it hot into beaten yolks of eggs, to which sugar and salt have been added, the mixture, when cold, being flavored, and the whites of the eggs, beaten and stiffened by cooking, being dispersed decoratively on the surface.

Examination of the recipes, old and modern, will show that the essential processes used in making *custard* enter into the making of *ice cream*. The domestic practice of freezing plain milk-custard, with cornstarch as a thickening, has led to a tendency to differentiate "frozen custard" from "ice cream" on the supposed basis that frozen custard has eggs in it and ice cream has not. The difference in flavor, which many persons dislike, is in part due to the taste of the yolks of eggs, not made up for by judicious flavoring, partly, indeed chiefly, to the taste due to the scalding when not rightly corrected, partly to the use of cornstarch as a thickening, often to the plainness of the mixture as often made. Both scalding and the use of yolks of eggs enter into the making of most sumptuously rich and expensive ice creams, which meet with cordial approval from the very persons who dislike what they would term "frozen custard", and whites of eggs are commonly added to the ice cream most generally approved by authors of American household cook-books, the so-called "Philadelphia ice cream".

There is no ground for regarding any "frozen custard" as not ice cream, however poor in flavor it may be. Frozen custard, of whatever kind, is ice cream; and poor "frozen custard", that is not agreeable to the eater, is merely poor ice cream.

*New York Ice cream*: A term peculiar to America formerly (and still, to some extent) applied to ice creams made with milk, eggs, cornstarch and sugar. Sometimes, but exceptionally, cream of milk was added to the mixture before cooking or to the "custard".

*Neapolitan Ice cream*: A term applied to a class of exceedingly rich creams made with boiled custard (milk, or cream of milk, yolks



of eggs and sugar), to which cream and flavoring is added when cold, or the beaten yolks of eggs in place of cream. With proper flavoring, the so-called "custard" taste is wholly unperceived. This general type of ice cream is the basis of some of the richest ice creams made. (See *French Ice cream* below.)

In current American trade and popular use: ice cream in "brick" form in three or more layers variously colored and flavored, often with a layer of water ice. In this use the term does not specify any particular kind of ice cream nor any special flavors, but only the form in which it is put up. Specification as to kind results in other phrasal compounds, as *French Neapolitan Ice cream*.

*French Ice cream*: An American trade term which, in both trade and popular usage, has largely supplanted *Neapolitan Ice cream* as the specificizing term for the class of ice cream made with milk, or cream of milk, yolks of eggs and sugar; more especially ice creams of this class so managed in the freezing process as to make them heavy and exceptionally smooth.

*Philadelphia Ice cream*: A term peculiar to America sometimes used—not uncommonly in cook-books of comparatively recent date—to specify ice cream made of a mixture into which cream of milk enters only or, if the cream of milk is very "thick", a proportion of two quarts of cream of milk to one pint of milk—as distinguished from the many mixtures used. The cream of milk may be scalded, but no yolks of eggs are used, though the beaten whites of eggs are sometimes added.

*Special terms*: Further comment is not necessary in regard to such terms as *sherbet*, *mousse*, *frappé*, *plombière*, etc., their use in English not differing in essentials from their use in French. In cook-books, some tendency to use *sherbet* as a class-term for water ices appears, though in general acceptance *sherbet* is still a water ice served as a soft ice, half a beverage—for example between the courses of a dinner: see the discussion of cook-books below.

### 3. 2. PRESENT USE.

3. 21. Evidence as to the origin and history of a term may not in itself suffice. This evidence must be tested, and, if necessary, corrected, by available evidence as to the use of the term in actual life, before complete understanding of present American use is formulated into a definition.

Such evidence will fall under the following heads:

- (a) Definitions in standard dictionaries of recent date. (3. 22).
- (b) Use of the term in recent or current literature. (3. 23).
- (c) Familiar use and understanding of the term by the average person. (3. 24).
- (d) Technical or other expert use. (3. 25).
- (e) Dialectal and cant uses. (3. 26).

### 3. 22. DICTIONARY DEFINITIONS.

3. 22. The standard dictionaries of recent date are the *New English Dictionary* of the English Philological Association, the *Webster* of 1913, the *Century* dated 1913, and the *Standard* of 1913.

The *New English Dictionary* represents British usage in general, taking account of only the most marked deviations in American usage. From the historical standpoint, it is the greatest work of reference ever published in any language. Its definition notes *ice* as the primary class-term including ice cream and water ice, and under *ice cream* it covers the variety of mixtures which contains milk or custard, its definition of *custard* covering mixtures of milk and eggs. Its definition of *ice cream* is at fault only in that it fails to note the use of the term in the 18th century as a primary term covering all classes of ices in the same way as *ice*.

The definitions in the three recent standard American dictionaries note the use of *ice* as a primary class-term to cover ice cream and water ice, but fail to note the characteristic American use of *ice cream* as the primary class-term. This is due to dependence on cook-books, British and American—the American cook-books often following the British (see 3. 253). The omission of so characteristic an American use is an error similar to that which leads to inclusion of British definitions of bird-names and failure to note use of those names for American birds. The fact that in America *ice cream* is universally used as the primary class-term may well rest on the indisputable evidence of familiar knowledge cited under 3. 24 below.

If in error in this omission, they are not in error as regards the variety of mixtures included under the term *ice cream*—their definitions indicating the use of cream-mixtures and custards, in full accord with the testimony of cook-books and household usage in America.

A further slight error may be noted in the *Standard*, the only dictionary which defines "Neapolitan ice cream". It gives the comparatively recent American application of this term to specify an ice arranged in layers of different colors, but fails to note its historical and specific application to ices made of rich custards as explained above.

A note may be added upon a point that is not trivial, although immaterial to the chief object of this discussion. Attention has already been called to the possible inaccuracy of the historical statement in the *New English Dictionary*, "Earlier term, iced cream." The *Century Dictionary* prefixes to its definition of *ice cream* the statement "Strictly iced cream." In view of the historical explanation of the formation of the compound, this statement is incorrect.

### 3. 23. RECENT AND CURRENT LITERATURE.

3. 23. This brief includes by general reference recent works and current references in the periodical press in support of the contention that *ice cream* in American usage is the primary class-term,

covering ices of whatever kind. Citations are not necessary, as such references are fully in accord with the evidence under the next head. The term *ice* or *ices* may appear in advertisements, cook-books, etc., but only as aping British and other foreign use.

### 3. 24. FAMILIAR USE.

3. 24. Familiar use and understanding of a term by the average person must be taken into careful consideration, because this may differ from the historical or technical use, and the law, in seeking an accurate definition, will aim to prevent the average person's committing or suffering wrong because of his ignorance.

In many cases, a person selected at random will have an incorrect, or only partially correct, understanding of a term—and a correct understanding will be found only among specially well-informed persons. For example, all know what *bread* means, but only a limited number could accurately define *corned beef*, and very few *sauce Tartare*. To take an instructive example, few persons except housekeepers in the United States know that mince-meat is often made without meat, and persons who have often eaten mince-meat made with meat will guess the percentage to be anywhere from 5 per cent. to 35 per cent.

No serious conflict exists between popular understanding and actual meaning of the term *ice cream*. Ice cream is so familiar an institution in the home, in the street, at the confectioner's—and, in the home, the male, as well as the female, members of the household, so generally engage in making it—that appeal can confidently be made to a universal understanding of its meaning. The dish is called typically *ice cream*, irrespective of its kinds, whether a cream-mixture or water ice. One makes "ice cream" for dinner, one goes to the "ice cream parlor" or confectioner for "ice cream," one buys it of the "ice cream man" in the street. In any of these cases "ice cream" may mean or include water ice.

Further, it is a fact universally known that the term *ice cream* covers a wide variety of mixtures. It is known that very rarely indeed, even in households that could well afford it, is *ice cream* made with cream of milk alone, because of the cost and as being too rich. It is very generally known that the amount of cream of milk may be varied according to the other ingredients used. It is very generally known that the addition of whites of eggs improves smoothness and that the addition of yolks enriches the mixture and improves its color. It is everywhere known that there is a gradation from rich mixtures down to use of milk only, in which cases in common domestic use cornstarch is added, and the mixture is brought to the boil. This, the poorest form of ice cream, is called "frozen custard". The only popular misapprehension is, as explained above, that the flavor disapproved of in this type of mixture is due to the presence of eggs, whereas it is due to the scalding or boiling in particular, to the presence of cornstarch, if used, and to the lack of compensating richness or intensity of flavoring, to cover the boiled taste.

## 3. 25. TECHNICAL USE.

3. 251. Technical use, that is use of the term by persons having special or expert knowledge of methods involved, may be held here to include its use:

- (a) By expert housekeepers.
- (b) By professional cooks.
- (c) By scientific experts in cookery.
- (d) By confectioners, and other manufacturers.

3. 252. The first two classes may be conveniently taken up together. The special knowledge of methods and recipes of expert housekeepers and professional cooks leads to no different use of the term from its general and popular use. They will have a more accurate knowledge of the proportions of mixtures, the uses of eggs, the difference between "poor" and "rich custard", and a more or less wide range of the innumerable fancy ice creams and frozen puddings with these names. But their use of the term is in nowise different from the general use.

3. 253. The same is true of scientific experts in cookery.

A special word is necessary here as to the evidence afforded by cook-books.

Cook-books, like other text-books, are built upon their predecessors and represent traditional usage. In addition, they constantly draw upon foreign cook-books, English and French, more particularly. A result of this is the use in some books of the characteristic British *ice* and *ices* for all ices. In others, the term *ices* is used to denote *water ices*. In others, no inclusive term is used as a heading. To give examples: Mrs. Lincoln uses "Ice cream and Sherbet", Mrs. Rorer "Ice creams and Sherbets", Mrs. Farmer "Ices, Ice creams, and other Frozen Desserts", Mrs. Berry "Ice cream and Ices", J. M. Hill "Ices". But in the text of these articles the familiar American use may appear. For example, Mrs. Lincoln, who heads her chapter "Ice cream and Sherbet", explaining that sherbet is water ice, uses *ice cream* none the less in its American generic sense (p. 546): "Fancy ice creams depend largely for their right to this name, upon the moulding. Any good recipe for a cream ice or water ice may be used."

As regards the range of mixtures, varying from those with cream of milk only to plain custard, the testimony of the cook-books is absolutely uniform.

Incidentally it may be added that in recent cook-books the number of special and fancy terms for particular kinds is largely increasing, including the French *parfaits* and the term *granite* derived from Italian *granita* directly or through the French.

This brief includes by general reference all American cook-books of recent or older date, in support of the definition of American use given below. (3. 3.)

3. 254. *Trade Use*.—This is used to cover all manufacturers, whether dealing in large quantities as wholesalers, or for their own

retail trade as the larger number of confectioners, restaurateurs, or caterers.

The trade use corresponds to that outlined above and defined below.

The article as a trade article is called *ice cream*. The term appears on signs, in advertisements, on bills of fare, on lists of varieties (including both cream ices and water ices) for the choice of customers, and as the general term in trade-reference as *The Ice Cream Trade Journal*.

In general, to the manufacturer the wide range of fancy names exist only as specifying varieties of certain staple kinds, these varieties differing only in form, special flavoring, method of service, or the like—the exception being where the name applied is understood as specifying a particular kind of mixture not included among the manufacturer's staple varieties. For him, *ice cream* divides into *cream ices* and *water ices*. Under water ices, fall those ices not made of cream-mixtures or custards—he subdivides them into four main classes, sherbets, granites, frappés, and punches. The cream ices are made of creams or custards. One class is made without stirring while freezing: this includes mousses, biscuits, and parfaits. The other class is made with stirring: this includes all the range of mixtures from "Philadelphia (or "straight cream") ice cream" through those made with various mixtures of cream of milk and milk. In any or all of these, he may use eggs in such a way as to make a custard, or otherwise in a way to ensure certain definite advantages—the white of eggs to ensure cohesion and smoothness, a modicum of yolk to take off the raw whiteness of white ice creams, as is done also by expert private housekeepers. Even in "Philadelphia ice cream", generally supposed to be without eggs, white of egg is added by some; this also is done by private housekeepers as an individual practice, as appears in cook-books. The most radical changes of recent years, generally accepted as good practice are:

(a) The giving up of the scalding of the cream of milk and milk (except in the making of ice creams of the so-called "custard" type, and even for these the cream of milk is no longer scalded as a rule)—due in part, no doubt, to the growing practice of pasteurization, but chiefly to the desire to avoid the scalded taste as unpalatable and therefore unpopular. Cream of milk similarly is seldom now scalded in private practice, though the cook-books direct scalding.

(b) The use of condensed milk (and, quite recently, milk powder) to give the desired "body" and "texture," supplanting to a large extent the use of egg yolks and starches for like purpose, and so satisfactorily meeting a growing preference for ice creams without a cooked taste. Similar use of condensed milk is not unusual in household practice and is noted in some cook-books.

(c) The use of a modicum of gelatin (or, more recently, vegetable gum), in place of whites of eggs and starches, to ensure cohesion and smoothness. This use of gelatin is noted in some cook-books, but its use in private practice, while not uncommon, is not as general as the trade use—due, without doubt, to the fact that ice cream



made in the household is so quickly consumed that there is less need of a "stabilizing" ingredient.

### 3. 26. DIALECTAL AND CANT USES.

3. 26. There are no cant or slang uses. Dialectic uses are confined to the differences between British and American usage, as regards the primary class meaning of *ice* and *ice cream* respectively, which have already been explained with sufficient fullness.

### 3. 3. DEFINITION OF AMERICAN USE OF THE TERM "ICE CREAM."

We reach now the following result: The history of the rise and use of the confection, the derivation of its name in English, French and Italian, the history of the use of the term from its origin to the present, the evidence afforded by standard dictionaries (except that they fail to note its universal use as a primary class-term in America), its use in current literature, the testimony of cook-books, the understanding and application of it by professional cooks, by private housekeepers, by manufacturers, and finally the universal popular use and understanding of the term, all coincide in confirming the accuracy of the following definition:

#### I. SPECIFIC USE.

Ice cream is a confection, or prepared food served as a delicacy, consisting of one of various "creams" or mixtures, as further defined below, frozen to a more or less rigid consistency in a suitable vessel or special contrivance, whether by packing in a freezing mixture (usually ice and common salt), or by air, brine, etc., chilled by modern appliances, or by other methods, with or without agitation or beating, during the process of freezing, by means of a dasher or similar contrivance, to ensure smoothness and the desired consistency.

**BASIS OF THE "CREAM" OR MIXTURE:** The basis of the "cream" or mixture may be a "cream" (as now understood), or a "custard" (in its recent sense, custards having been formerly also called "creams"), whence come two typical kinds of the confection.

(a) A cream as the basis of the first type, may have, as its basic ingredient either cream of milk only, preferably not too thick, in which case thinning with milk is advised to prevent over-richness, the product when thus containing a high percentage of butter-fat being termed "Philadelphia ice cream", (or, commonly in trade use, "straight cream ice cream") or cream of milk and milk, or cream of milk, milk and other ingredients—as condensed milk, eggs, etc.—, or milk and other ingredients, in proportions to produce a mixture of desired or available character as regards richness, healthfulness, or cost, varying from a high cream of milk content to plain milk. In the latter case, consistency is gained by adding whole eggs or egg yolks and often cornstarch, and bringing the mixture to a boil pro-

ducing a custard, which, when frozen, because of its characteristic taste is often called "frozen custard". This, as a cream with a custard basis forms a connecting link with the second type, from which it is distinguished by lack of richness.

(b) The second type of ice cream uses as its basis a custard of a desired degree of richness, made of cream of milk, milk, and eggs, and brought to the boil, the product being specifically known in cook-books as "Neapolitan ice cream" or "custard ice", and in trade use as "French ice cream" or as "frozen custard", according to the method employed in freezing. It is characteristically employed for elaborate fancy ice creams, "frozen puddings", etc., and includes among its varieties some of the richest ice creams.

USE OF EGGS: Eggs enter as above into all custard mixtures. To cream mixtures, the whites of eggs may be added for cohesion and smoothness, and a modicum of yolk for color, as individual preference may direct. This use of eggs, in both domestic and trade use, extends even to "Philadelphia ice cream", popularly supposed to be without eggs.

SWEETENING AND FLAVORING: The mixture, further, is sweetened and flavored, the flavoring consisting of essences, such as vanilla, wines or liqueurs, and fruit juice, fruit pulp, etc.

ADDITIONAL INGREDIENTS: There may further be added solid substances, as contributing to the flavor, or as diversifying the consistency, or as delicious in themselves, such as whole or ground nuts, candied fruit, powdered cake or bread, etc. When the confection consists chiefly of such solid substances held together by ice cream, a special class of *ice cream* results known as "frozen puddings". There may further be added, as a "stabilizer", in place of the whites of eggs, a small amount of gelatin or vegetable gum. In trade practice such addition is universal in ice creams of the first type described above.

CHARACTERISTICS OF THE FINISHED PRODUCT: After freezing, as above described, the confection may be served in the mass, or specially moulded into "bricks" or other shapes, or variously ornamented. In respect to its uses, ice cream is a sweet dish, made and enjoyed for its palatability, due to its flavor, consistency, and agreeable coldness, and for its attractive appearance to the eye, as the result of its frozen state, or as colored by its ingredients, or as specially colored, or as arranged in layers differently colored, or as shaped in special forms by moulds or otherwise, or as decorated with fruits, nuts, jelly, cake, or other edible or non-edible ornamentation, or as served in any way which taste or fancy may dictate.

## II. USE AS A SECONDARY CLASS TERM.

By natural development from the above sense, *ice cream* is used as a secondary class term, as meaning

A kind of ice cream (as above defined).

In this use, it forms a plural "ice creams", may take the indefinite article, "an ice cream", or a demonstrative pronoun, "This ice cream is better than that".

In this sense, it is employed as a parallel term, in general use, beside *water ice* denoting ices not made with creams or custards as a basis, or as a parallel term with *ice* in the special sense of *water ice*. In this sense, it has a synonym *cream ice*, in cook-book and trade usage, recently coined on the model of *water ice*. In limited, chiefly cook-book use, it is sometimes placed parallel with *sherbet*, applied as a class-term to denote *water ice*.

### III. USE AS A PRIMARY CLASS TERM.

By a natural development of the national preference for *ice creams* (Sense II) as against water ices, in American use, *ice cream* is universally employed as a primary class-term for all kinds of the confection as forming a class with the meaning:

Ice cream (sense II) or water ice as referred to without specification of kind.

Examples: "An ice cream freezer", "*The Ice Cream Trade Journal*", "An ice cream parlor", "To order ice cream for dinner", "We have ice cream every Sunday".

In this sense, the term has as a synonym the term *ice*, and *ices*, limited in America to book-use or as an individual adoption of British use, in which *ice* or *ices* is now the accepted primary class-term, though in the 18th century a use of *ice cream* like the American use was found.

Though so characteristic and universal an American usage, this sense is not noted in American dictionaries.

### 4. THE DEFINITION FROM A LEGAL STANDPOINT.

4. 1. The above definition is an attempt to state facts with, as nearly as possible, scientific fullness and accuracy. It is a philological statement. What consideration, supposing it to be complete and accurate, does it merit in a legal relation?

In discussing this question, the student of language does not presume to step outside his domain and assert what should or should not be a legal definition. On the other hand, he may with propriety assert that the law, if it be the law, and not an arbitrary assumption of legal power, shall not trespass outside its proper bounds into the province of philology and frame an inaccurate definition contrary to the facts and contradicting right judgment.

In other matters of scientific fact, the law does not presume to determine. It could not and would not rule that the sun goes round the earth or that a flower or animal shall be considered as belonging to a particular genus to which it does not belong. In the case of the meaning of a given term, however, it is not so easy to see that the law cannot arbitrarily alter or modify accepted use, or infringe the right of a person to use it in its proper accepted meaning. None the less, the accepted use of a term is as much a fact of nature as the constituents of a given chemical compound. As such it is extrajudicial, and outside the power of the law to determine.



Nor does the law presume to determine it. Legislators may so presume, but such action is not in accordance with the law. If the question of the place of the earth in the solar system or the genus of a flower came before the law in a legal relation, it would be decided by appeal to scientific authority, and if the facts were not known in any individual case, they would have to be ascertained by scientific methods. So similarly the definition of the meaning of a word. It is well known that in foreign countries questions of language—meaning and usage—are settled by prescription, but they are so settled by a properly constituted scientific tribunal. Lacking an official tribunal, the law should take process upon such a statement of conclusions as the above definition, supported by presentation of the historic evidence from which those conclusions were derived, and exposition of the methods and principles employed in reaching them.

4. 2. It is plain that any scientific conclusion with respect to the meaning of the name of a thing cannot be of force, or come into consideration, with regard to what the law may rule as regards the thing itself. For example, if it came to be recognized that the drinking of beer or wine or spirits were detrimental to the general interests of society, the legislature might act to terminate or restrict the drinking of these liquors. But if, while legislators were doing this, they should presume to tamper with the names of these liquors, and should ordain by statute that *beer* should hereafter be applied only to a malt liquor of not more than three per cent alcohol, such an enactment would be purely arbitrary. On the other hand if a brewer should attempt to sell a so-called "beer" of twenty per cent alcohol, a Court might at once put a stop to it, basing its decision on the history and present acceptance of the term *beer*. The fact of the meaning of *beer* would be taken into account in the decision precisely as any other fact of nature would be in a case of different kind, for example the analysis of an ore under dispute.

4. 3. The above definition aims to supply the information which should be the basis of any law relating to the meaning and use of the term *ice cream* or to the composition of ice cream.

\*In questions of the kind under discussion, the law in the interests of the public should first ask:

Is the substance or product sold under a given name properly included under that name?

Obviously, if it is not what the name calls for, a fraud is being committed, and the law should intervene; but if the product sold is what the name calls for then no fraud is being committed and there is no reason or excuse for interference on this ground.

\*However, even when the product sold is what the name calls for the law might properly inquire as to the suitability of the substance or product itself, and its next question is:

Is the product in any way prejudicial to health because of the presence of any of the ingredients called for or permitted by the name?

If the answer is in the affirmative, then the use or future disuse

of such ingredients is properly subject to a legal enactment,—either regulatory or prohibitive.

It is at this point that legislation often goes seriously astray. Acting on private judgment, on a superficial knowledge of the facts, or without taking into account the economic aspects of the matter as regards consumer and manufacturer alike, the persons responsible for such legislation sometimes fix arbitrary standards.

An illustration of this important point is afforded by the legislation concerning mincemeat. It is suggested that a standard of ten per cent meat content be fixed legally on the supposition that mincemeat recipes in private and domestic use contain roughly on the average ten per cent. This suggestion fails to take account of the fact that recipes for private use are for small quantities that may be used quickly or may be at intervals dosed with spirits, whereas if a manufacturer used ten per cent meat content, he is constrained to use a high percentage of spirits, or artificial preservatives. There is the further error that mincemeat is thought to be valued for its nutritive qualities, whereas, except in lumbur camps or similar use (and even there), it is valued as a sweet dish—and that the entire history of mincemeat shows a decrease in meat content and increase of fruit content, as fruit became more plentiful and inexpensive, because of superior palatability, to the point of discarding meat altogether. There is again the further error of supposing that meat is generally used in mincemeat in America, whereas some thirty per cent of housekeepers in America, and nearly all in England and the British possessions, do not use it at all.

4. 4. The above definition aims to supply the information necessary to answer the questions, as stated above, which may properly be asked by the law. It has been pointed out that legislators may easily go astray in fixing an arbitrary standard, though with the best intentions. But they may commit a still more serious error, and ordain that a manufactured product shall not bear the name usually applied to it unless it conform to that new and arbitrary standard. This may not only be to the prejudice from an economic standpoint of the best interests of the consumer in general, but is also in contradiction of the law, which cannot arbitrarily modify the accepted use of a term in contradiction of the facts of accepted usage. To cite again the illustration used above, legislation fixing a definite percentage of meat in mincemeat should unquestionably be declared illegal.

4. 5. It remains to apply these questions to the question of the determination of the ingredients of the confection, ice cream, with which this brief is concerned.

\*The above definition attempts to state the actual facts as regards the meaning and inclusion of the term.

\*Any attempt to limit the meaning of the term *ice cream* to a narrower inclusion by an arbitrary ruling would be as unwise and as unjust as it would be flatly in contravention of the historic and present acceptance of the term.

When, with purity (freedom from ingredients not called for by

name), wholesomeness and possibility of deception in mind, the individual legislator, committee, commission, or other person or body, considers the desirability of creating a standard for ice cream in the public interest, and it is ruled that ice cream should consist of cream of milk alone with sweetening and flavoring, the arguments urged are:

1. The term *ice cream* calls for cream of milk.
2. The admission of eggs causes the compound to be a custard.
3. The use of cream of milk makes the product more nutritious, and therefore more wholesome.
4. Enforced use of cream of milk will prevent the manufacturer, including the manufacturing retailer, such as the confectioner and caterer, from using less costly substitutes for it.

An examination of these arguments will show, so far as the interests of the buyer or consumer are concerned, that not one of them is justified as regards the meaning of the term, or as preventing a fraud upon the consumer, or as ensuring him a more wholesome comestible, or as serving the interests of the public in general as regards economy or opportunity at pleasure for enjoyment. On the other hand, there is a serious infringement of the rights of the manufacturer.

The arguments may be taken up in order:

1. The term *ice cream* does not call for *cream of milk*. The whole history of the term, as above traced, shows this to be a flagrant error.

2. The use of custard as a base produces a special type of ice cream running back to an early period in its history and including in its varieties some of the richest and most delicious ice creams. The use of whites and yolks of eggs for specific purposes in other creams is not unwholesome, and perpetrates no fraud upon the consumer—not to speak of their frequent use in domestic practice.

3. The use of cream of milk alone may render ice cream more rich in fat, but not therefore more wholesome, or affording greater benefit if it affect the quantity that may be safely eaten. Moreover ice cream is not generally eaten for nutritiousness. And if nutritiousness is to be considered, why bar ice creams in which eggs are used, as in the whole class of Neapolitan or French ice creams, or ice creams in which the solids of milk that afford more nutriment than the fat of milk predominate?

4. The argument that enforced use of cream of milk will prevent use of less costly substitutes by the manufacturer is directly met by the fact that at present many ice creams not made of cream of milk alone are for good reasons costly to make and to buy. But more important than this, the argument raises the economic question. Use of cream of milk alone would at once establish a minimum manufacturing cost much higher than it is at present, whereas now a wide range of perfectly wholesome and palatable mixtures is possible with a corresponding range of prices. Continuous fraud upon purchasers is no more probable at present than with any other article of merchandise—whereas to enforce use of cream of milk only would,

by limiting variety and by raising the minimum price, restrict the customer's opportunity for enjoyment. It would be as inequitable and economically as unwise as to enact that clothing should consist of wool only and not of mixed wool and cotton or of cotton.

Such answers the definition provides to the type of argument commonly urged, proving such arguments to be only superficially cogent.

The definition, however, does more than this. It fully supports the manufacturer's contention that the enactment of a standard for ice cream is an infringement by inequitable legislation of his rights.

1. The origin, subsequent history, and present use of the term *ice cream* show that it has always covered a wide range of mixtures, the term *cream* meaning a mixture when it was used in the compound, and the range of mixtures being the same today, as regards use of cream of milk, milk, and eggs, as when the confection originated.

2. The fixing of an arbitrary standard is not to debar the use of prejudicial or unwholesome mixtures. The mixtures debarred are perfectly wholesome. The arbitrary standard aims to confer upon the consumer a benefit that is wholly illusory, since by limiting variety and by raising the minimum price, it limits his opportunity for enjoyment. Under the definition, the manufacturer claims the right to offer a wide range of wholesome ice creams.

3. The definition shows that trade practice and domestic practice run parallel as regards use of basic ingredients in the mixtures used. It is inequitable to lay restrictions upon the manufacturer which are counter to general practice and understanding in the making and use of the confection.

Upon the facts as stated in the definition and the merits of the case, it is contended that the fixing of an arbitrary standard upon the constitution of the mixtures used in making ice cream, as regards the proportions of cream of milk used, the use or disuse of eggs, or other limitation upon the nature of those mixtures in contradiction of historic practice, both domestic and trade, is inadvisable in view of the interests of the consumer and inequitable as regards the rights of the manufacturer.

# APPENDICES

Containing Selected Citations Illustrating the History  
of the Words

## CREAM AND ICE CREAM.

- I. CREAM in the Sense of "Mixture."
- II. ICE CREAM.





I.

CREAM IN THE SENSE OF "MIXTURE."

(39)



## I. CREAM IN THE SENSE OF "MIXTURE."

## A. DEFINITIONS FROM DICTIONARIES.

(The dictionaries quoted are the *New English Dictionary* of the English Philological Society, the supreme historical authority, which has been in process of preparation and publication over fifty years, with the cooperation of readers and scholars all over the world, and the three standard American dictionaries which have issued editions of recent date.)

(1893) *New English Dictionary* (Part C), Oxford.

(*Cream*) 2. *transf. a.* A fancy dish or sweet of which cream is an ingredient, or which has the appearance and consistency of cream, as almond, chocolate, iced cream, etc.—

b. A substance or liquor of cream-like consistency; *esp.* a decoction (of barley, etc.): cf. CREMOR. *Obs.*

c. The part of a liquid which gathers on the top like the cream on milk; a 'head' of scum, froth, etc.—

d. A cream-like preparation used cosmetically. See also COLD CREAM.

1913. *Century Dictionary and Encyclopedia*.

(*Cream*) 5. A sweetmeat or dish prepared from cream, or of such consistency as to resemble cream: as, an iced cream, or ice-cream; a chocolate cream.

1913. Funk and Wagnalls, *Standard Dictionary*, New York.

(*Cream*) A delicacy for the table resembling cream or made in part of it; as ice-cream, whipped cream; also, a bonbon containing a cream-like substance.

1913. *Webster's International Dictionary*.

(*Cream*) 2. Hence, - - - [Def. 1. defines cream of milk] A fancy dish or confection prepared from cream, etc., or so as to resemble cream, as a kind of filling for cake made with cream, or corn-starch, eggs, etc.

## B. QUOTATIONS.

The following quotations are submitted in proof of the early and wide-spread use of *cream* to denote a mixed sweet dish that may or may not contain cream of milk, or even milk, and often contains eggs, etc. This use began long before the practice of freezing such creams (the earliest quotation in English—a mixture not containing cream of milk dates in the 15th century), and comes down to our own day. The present use is proved by quotation from a typical American cook-book, but all American and English cook-books are included by general reference.

It is also shown that the creams were chilled or iced before serving, before the practice of freezing came in. Also, that the same creams used before this practice came in were eaten frozen or unfrozen, proving that *cream* in *ice cream* has the sense of mixture (see also quotations for *ice cream* under II).

It will be noted that the term *cream* included mixtures now termed *custards*, a recent development of the term *custard*.

A number of foreign references from French, Spanish, German, Dutch, are first given to show the general Continental use of *cream* in the sense of mixture, followed by the English references.

## 1. QUOTATIONS FROM CONTINENTAL LANGUAGES.

1676. *L'Escole parfaite des  
Officiers de la Bouche.*

Paris.

p. 210.

## CREME BLANCHE.

Boil together a pint of good milk, a good-sized piece of sugar and the whites of two eggs well beaten, and a little orange-flower water. Stir it well until it begins to thicken, then let it cool and put it through a fine strainer.

1676. *L'Escole parfaite des  
Officiers de la Bouche.*

Paris.

p. 210.

## CREME DE LAIT D'AMANDES.

Shell and bray in a mortar a pound of sweet almonds, moistening them with fresh milk; when they are macerated pour over them a pint of milk and mix well; heat almost to the boiling point: strain through a cloth, pressing thoroughly, and take the milk produced, with a good-sized piece of sugar, and boil it until it begins to thicken. Add a little orange-flavor water and serve the Cream cold.

1683. *Le Cuisinier François.*

Rouen.

p. 111.

## CRÊME DE PISTACHES.

Take a handful of pounded pistache nuts and a quart of milk and boil them. When they are nearly done, mix 6 egg yolks with your pistache nuts and a little fresh butter: put the whole into a saucepan with a quantity of sugar and a little salt. If you wish add musk or amber, but very little musk: beat it well, and serve.

1737. *De Ge oefende en Ervaren Keuken-Meester.*

[The Practical &amp; Experienced Cook.]

Amsterdam.

p. 145.

## 22. Room van Pistasjes.

## [PISTACHE CREAM.]

Put a handful of peeled Pistache nuts in  $\frac{1}{2}$  pint of Milk, let them cook together with a little flour stirred in, when it is nearly done beat in the yolks of 6 Eggs with some of the nuts and a little fresh Butter. Put it all in a dish with a good deal of Sugar and a little Salt. (If you wish add Musk or Amberggris to the sugar, but very little Musk); mix it well together, . . . and serve. . . .

1740. *Le Nouveau Cuisinier Royal et Bourgeois.*

M. [François] Massialot.

Paris.

v. 1, p. 276.

## CRÊME D'AMANDES.

After having shelled the almonds pass them through bolting-cloth with a little water to make almond milk. A great many almonds are necessary. Make a cream whether of pistache nuts, or chocolate, or any other flavor, with only a little flour, sugar and orange-flower water, without eggs or milk, but a little salt and much sugar. Cook it with the almond milk until it is the proper consistency.

1742. *Le Cuisinier Moderne.*

Vincent La Chappelle.

The Hague.

vol. 3, p. 264.

## CRÈME DU VIN DE RHIN.

Put into a saucepan about a bottle of Rhine wine, add a stick of cinnamon, the rind of a lemon, and a piece of sugar: when it boils add about 12 yolks of eggs well beaten, and a glass of water. Stir it until the Cream thickens, strain through a cloth into the dish in which you serve it cold.

1742. *Le Cuisinier Moderne.*

Vincent La Chappelle.

The Hague.

vol. 3, p. 267.

## CRÈME À L'ITALIENNE.

## CRÈME BRULÉE.

## CRÈME BLANCHE LEGÈRE.

All made with milk, eggs and flavoring, cooked in a double boiler, and served cold. The Crème Brulée has caramel added, and the Crème blanche has only the whites of the eggs.

1747. *Arte de Roposteria.*

Juan de La Mata.

Madrid.

p. 138.

## NATA A LA INGLESA.

[cream]

Pound thoroughly in a stone mortar, 2 egg yolks, 3 ounces of sugar, 2 ounces of candied lemon and orange peel, and 5 ounces of pistache nuts well cleaned. When all these are well blended, mix with them a quart of milk and cook them, stirring constantly. After cooking add 5 or 6 drops of orange flower water, and putting it in a dish, cook it again until it is of a golden brown color.

[This recipe is identical with the one given in *Le Confiturier*, 1791.]



1747. *Arte de Reposteria.*

Juan de La Mata.

Madrid.

p. 139.

## NATA A LA PORTUGUESA.

[cream]

Mix with a pint of milk half a pint of good cream, the yolks of 3 eggs, powdered sugar to taste, a small piece of cinnamon, and the same amount of candied lemon and orange peel cut in small pieces. Let it boil, stirring constantly, until it appears ready to adhere to the sides of the kettle or saucepan.

1759. *Le Manuel des Offices de Bouche.*

Paris.

p. 352.

## ENTREMETS DE CRESMES.

- A l'Anglaise. Cream boiled with sugar, cinnamon, coriander & lemon, mixed with a little flour and 6 yolks of eggs put through a bolting cloth and cooked in a bain-marie.
- De thé. Cream, tea and sugar, a little flour, 6 yolks.
- De café. Same with coffee.
- Douce. Cream, sugar and white of eggs.
- A l'Espagnole. With wine and eggs.
- A l'eau. Like "l'Anglaise" except made with water instead of cream.
- A la Reine. Do. do. except with whites of eggs, instead of yolks.
- Au chevreffeuille. Like the one "a l'eau" except the addition of half a pound of pounded almonds.
- Vierge. The beaten whites of 6 eggs.
- Bourguignotte. Like "l'Anglaise" with pounded macaroons added after cooking and some marmalade.
- Polonoise. Cream, sugar, vanilla, 8 egg yolks.
- Au chocolat. Cream, sugar, chocolate and egg yolks.
- Grillée. Cream cooked with spices, mixed with caramel & 6 egg yolks.
- Various other forms with rice, etc.

1772. *Dictionnaire Portatif de Cuisine, etc.*

Paris.

p. 62.

CHOCOLAT (CRÈME DE)  
In a Bain-marie.

1 oz. of grated chocolate mixed with the yolks of 4 eggs and a little milk, add to it 1 pt. of cream, and half a pt. of milk. Sugar to taste; have some boiling water in a casserole, set the dish containing your cream in it, and cover with another dish, and do not remove it until the cream is thickened.

1772. *Dictionnaire Portatif de Cuisine, etc.*

Paris.

p. 199.

CRÈME LÉGÈRE.

Boil for  $\frac{1}{4}$  of an hour a pt. of milk and  $\frac{1}{8}$  of a pound of sugar. Stir in the whites of 2 eggs well beaten, and let it boil once or twice more beating all the while. Let it cool and serve, sprinkling with orange-flower water and powdering with sugar.

1772. *De Volmaakte Hollandische Keuken-Meid.*

Written by a Well-known Lady of The Hague.

Amsterdam.

part 6, p. 55.

[LEMON CREAM.]

Take the juice of 4 lemons,  $\frac{3}{4}$  of a pound of loaf sugar mixed with the whites of 4 eggs, stir it until it thickens, then take it from the fire and put in a few drops of orange-flower water, . . .

1772. *De Volmaakte Hollandische Keuken-Meid.*

Written by a Well-known Lady of The Hague.

Amsterdam.

part 6, p. 59.

CRÈME BRULÉE.  
[Caramel Cream.]

Half a pint of sweet cream, 3 eggs in some sugar, place it on the fire; when it thickens, take a red hot shovel and color it.

1775. *Les Dons de Comus, ou L'Art de la Cuisine.*

Paris.

vol. 3, p. 191.

CRACKLING CREAM.  
*Crème en Croquet.*

Boil 1 pint of milk with a little sugar. Beat up the yolks of 6 eggs on a plate. Mix with your milk, and set the dish on the stove. Stir constantly until the cream thickens all through. Set the dish on a tripod to cook slowly. When it is done pass a red hot shovel over it to dry it. Then cut it in bits with a knife, and set it in the oven to dry out so that it will be crisp, like a spice cake. While cooking it sprinkle on a grating of lemon rind.

[This same recipe is given in a number of English books about the same period.]

1775. *Les Dons de Comus, ou L'Art de la Cuisine.*

Paris.

vol. 3, p. 187.

## BLACK CREAM.

Boil a pint of milk with sugar. Take a piece of charcoal the size of an egg and break it up in a goblet with a little of the milk, until the latter is quite black. Break into a dish the yolks of 8 eggs. Mix in your cream and enough of the black milk to give sufficient color. Strain through a doubled napkin, and cook in a double boiler. 5 or 6 bitter almonds may be added. Serve cold. It may be covered with the white of egg whipped and iced.

1777. *Allerneuestes Kochbuch.*

Mr. Jean Neubauer.

Vienna.

p. 405.

AN ORANGE CREAM.

Take 6 Oranges, rub three of them on some sugar into a dish, pour over the juice of the six, beat up 8 egg yolks and one whole egg and add with a small piece of sugar and a little white wine, strain it through a hair sieve, set it over boiling hot water till it thickens.

1777. *Allerneuestes Kochbuch.*

Mr. Jean Neubauer.

Vienna.

p. 404.

EINE CREM ROJALE.

Put some bitter and sweet almond paste and some almond biscuits into a dish with sweet Cream, rub a Lemon on some sugar, a little cinnamon, a small piece of sugar, some egg yolks and one whole egg, when it is all well mixed strain through a hair sieve, set it over a moderate fire, cook until it begins to thicken, let it cool and serve.

1791. *Le Confiteur.*

Paris.

p. 273.

CRÈME VELOUTÉE.

1 pt. of sweet cream and the same quantity of milk, 4 oz. of sugar, boil together, and when it is reduced one-half take it off the fire; then dissolve some rennet about the size of a pea in 2 or 3 spoonfuls of milk with 5 or 6 drops of orange-flower water. Mix all together, put it over hot coals covering with a plate, on which place a few coals to keep it warm, which causes it to thicken. Serve cold.

1791. *Le Confiteur.*

Paris.

p. 275.

## CRÈME VIERGE.

1 pt. of good milk and half a pt. of cream, 3 or 4 oz. of sugar, 4 bitter almond cakes; boil them together gently, and when reduced about  $\frac{1}{4}$  put in the whites of 2 eggs well beaten and 5 or 6 drops of orange-flower water, or the zest of a lemon. Stir constantly over a slow fire until it begins to thicken; serve cold.

1791. *Le Confiteur.*

Paris.

p. 278.

## PORTUGUESE CREAM.

Take a pt. of milk and half the quantity of cream, the yolks of 3 eggs with some sugar, a piece of cinnamon and the same amount of lemon peel cut small. Cook till it thickens to a cream, stirring all the time. Serve cold.

1791. *Le Confiteur.*

Paris.

p. 280.

## LEMON CREAM.

The juice of 6 lemons with some of the zest mixed in a glassful of water with the whites of 6 fresh eggs, all well mixed and strained several times through a cloth; cook over hot coals, without allowing it to boil, when thick take it off and serve it cold.

1791. *Le Confiteur.*

Paris.

CRÈME CROQUANTE.  
(Crackling Cream.)

Mix gradually the yolks of 4 eggs with a pint of milk; add the grated rind of a lemon and sugar to taste; stir over a moderate fire until it is thick. Reduce the fire a little and take up the cream in spoonfuls putting it around the edge of a dish, taking care not to

burn it, but seeing that it sticks to the dish. Color it with a hot shovel; then detach the cream with a knife and pile it up on the same dish; set it in the oven to crisp.

1791. *Le Confiturier.*

Paris.

p. 275-6.

CRÈME VIERGE, another way.

3 half-pints of good cream boil over a slow fire with 3 or 4 oz. of sugar until it is reduced about  $\frac{1}{4}$ . When nearly cold, add rennet the size of a pea, 5 or 6 drops of orange-flower water, mix thoroughly and let it set.

1791. *Le Confiturier.*

Paris.

p. 277.

CHOCOLATE CREAM.

$\frac{1}{2}$  pt. of cream to a pint of milk, the yolks of 2 eggs and 3 oz. of sugar; mix and boil until reduced about  $\frac{1}{4}$ , stirring constantly; then add enough grated chocolate to give it taste and color; let it boil up again 5 or 6 times, and let it cool before serving.

1791. *Le Confiturier.*

Paris.

p. 277.

CRÈME DE PISTACHES.

Heat 2 or 3 ounces of good Pistache nuts, shell them and bray them in a mortar with a little lemon peel. Take a quart of good milk, two egg yolks and 4 ounces of sugar, beat them all together and add the pistache nuts, boil the whole over a moderate fire, taking care to stir it well until the Cream is cooked, but not too thick. Put it on a china dish to serve cold.



1791. *Le Confiturier.*

Paris.

p. 278.

## CRÈME À L'ANGLAISE.

Take 2 yolks of eggs, 4 ounces of sugar, 2 ounces of lemon peel and orange peel candied, and 5 ounces of peeled pistache nuts; pound them well together and dilute with a quart of milk; cook over a slow fire stirring constantly. When it is done add 5 or 6 drops of orange-flower water, put it on a dish that can be placed on the fire until the edges are crisp, then sugar it well and color it golden brown with a red hot shovel.

1791. *Le Confiturier.*

Paris.

p. 279.

## CRÈME GLACÉE.

After having made a Cream [in the usual way with a quart of milk and half the amount of cream, the yolks of two or three eggs, flavoring, etc.] when it is ready to serve, glacé it with icing made of powdered sugar, the white of an egg, and a few drops of orange-flower water. Spread it over the Cream and dry it out with a hot stove-lid.

1791. *Le Confiturier.*

Paris.

p. 283.

## CRÈME À L'EAU.

Beat up 4 fresh eggs whole, with a quart of water, the rind of a lemon cut very fine, also the juice, and 4 ounces of sugar: pass it through a napkin 2 or 3 times, cook it on a dish over a very slow fire stirring it until it makes a thick cream—take it off while hot but serve it cold.

## 2. QUOTATIONS FROM WORKS IN ENGLISH.

c. 1430. *Two Fifteenth Century Cookery Books from the Harleian Mss.*

[Edited by Thos. Austin, London, 1888.]

p. 21.

## CREM DE COLOURE.

Take an make thicke Milke of Almaundys, and do it in a potte, and sette it ouer the fyre: then take a fayre Canvas, an put it ther-on and late renne out the Water; then take the halfyndele, and put it in a pot of erbe; then take the other halfyndele and parte it [in] to and make the half below and do ther-yn Wyn, Sugre, Clowes, Maces powder of Canelle, take [blank in Ms.] and grynd a lytel in a mortar; than temper it vppe wyth almaunde mylke, and do euery of hem in a potte an loke that it be y-like chargeaunt and sette it ouer the fyre, an boyle it a lytyl, an serue forth.

c. 1430. *Two Fifteenth Century Cookery Books from the Harleian Mss.*

[Edited by Thos. Austin, London, 1888.]

p. 33.

## CREME BASTARDE.

Take the whyte of Eyroun a grete hepe, and putte it on a panne ful of Mylke, and let it boyle; then sesyn it so with Salt an honey a lytel, then lat hit kele, and draw it thorw a straynoure, an take fayre Cowe mylke an draw yt with-all and seson it with Sugre, and loke that it be poynant and doucet: and serue it forth for a potage or for a gode Bakyn mete, wheder that thou wolt.

c. 1430. *Two Fifteenth Century Cookery Books from the Harleian Mss.*

[Edited by Thos. Austin, London, 1888.]

p. 91.

## FRIED CREME DE ALMONDES.

Take almondes and blanche hem, and wassh hem in faire water and Bray hem small in a mortar with faire water: And then take

hem and the water togedre som-what thik, and drawe hem through a streynour into a faire potte, And set hem ouer the fire, and lete hem boyle ones; And then take hem downe, and cast thereto Salte, and lete stande a forlonge wey or ij And cast a litull vinegre therto: And then cast hit on a faire linnen cloth that is faire wassh and the water y-wronge oute there-of; and cast hit all abroad with the ladull and lete men hold the cloth al abroad; and then take a ladill and draw vndur the cloth and draw away the water all that a man may. And then gadur all the creme togidur in the clothe; And then take the cloth with the creme, and hange hit vppon a pyn, and lete the water droppe out two or thre houres or more; And then take hit of the cloth, and putte hit in a bolt of tre, And caste Sugur ynogh thereto and a litul salt, And if hit wex to thik, take swete wyne and temper hit with ale; And then take reysons of coraunce clene y-wassh and put hem there-in, that they be not seyn; And whan hit is dressed in maner of mortrewes take rede anneys in confite or elles leues of Burage, and set thereon in a dissh.

1649. *The English House-Wife.*

G. M[arkham.]

5th ed. London.

p. 111.

[No heading.]

Take a pint of the sweetest and thickest creame that can be gotten, and set it on the fire in a very cleane scowred skillet, and put into it Sugar, Cynamon, and a Nutmeg cut into four quarters, and so boyle it well: then take the yelks of four Eggs, and take of the slimes, and beat them well with a little sweet Creame: then take the four quarters of the Nutmegge out of the Cream, then put in the egges, and stir it exceedingly, till it be thick: then take a fine Manchet [loaf of bread], and cut it into thin shives, as much as will cover a dish bottome, and holding it in your hand, powr half the Cream into the dish: then lay your bread over it, and cover the bread with the rest of the creame, and so let it stand till it be cold: then strew it over with Canaway Confets, and pricke up some Cinamon Confets and some slic't blates; or for want thereof, scrape all over it some Sugar and trim the sides of the dish with sugar.

1660. *The Accomplisht Cook, or The Art & Mystery of Cookery.*

Robert May.

London.

ALMOND CREAM.

Take  $\frac{1}{2}$  lb. of Almonds paste beaten with rose-water and strain it with a qt. of cream; put it in a skillet with a stick of cinnamon and boil it, stirring constantly; when it is boiled thick, put sugar to it and serve it up cold.

1660. *The Accomplisht Cook, or The Art & Mystery of Cookery.*

Robert May.

London.

ALMOND CREAM otherways.

Take thick almond milk made with fair spring water and boil it a little, put to it a little salt and vinegar, cast it into a clean strainer and hang it upon a pin over a dish- . . . add to it beaten sugar and a little sack, muskedine or white wine.

1660. *The Accomplisht Cook, or The Art & Mystery of Cookery.*

Robert May.

London.

ALMOND CREAM otherways.

Take a qt. of cream, boil it over night, then in the morning have  $\frac{1}{2}$  lb. of almonds blanchd and fine beaten, strain them with the cream and put to it  $\frac{1}{4}$  lb. of double refined sugar, a little rose-water, a little fine ginger and cinnamon finely searced, mix together. dish it with fine carved sippets round about it.

1660. *The Accomplisht Cook, or The Art and Mystery of Cookery.*

Robert May.

London.

SNOW CREAM.

1 quart of cream, the whites of 6 eggs, a quartern of rose-water,  $\frac{1}{4}$  pound of double refined sugar beaten together. Have a fine silver dish with a penny manchets the bottom and upper crust being

taken away and made fast with paste to the bottom of the dish and a streight sprig of rosemary set in the middle of it, beat the cream and eggs together and as it froatheth take it off with a spoon and lay it on the bread and rosemary.

To make SNOW CREAM otherwayes with Almonds.

Take 1 quart of good sweet cream, and  $\frac{1}{4}$  pound of almond paste fine beaten with rose-water and stirred in  $\frac{1}{2}$  pint of white wine, put some orange-peel to it, and slic't nutmeg and 3 sprigs of rosemary, let it stand 2 or 3 hours in steep; then put some double refined sugar to it and strain it into a bason, beat it till it froath, and as the froath riseth take it off with a spoon.

1688. *London Gazette*, No. 2383/2 (N. E. D.)

All such Fruits, Iced Creams, and such other Varieties as the Season afforded.

1690. *Young Cooks Monitor*.

By M. H.

London.

p. 27.

To make LEMMON CREAM.

Take 6 Lemmons and pare them very thin and steep the paring in a quart of fair water that it may be very strong of the Lemmon-peel, then squeeze in the Juyce of the Lemmon; then add to it 3 spoonfuls of Orange-Flower water and the whites of 8 Eggs and 2 Yelks beaten very well then strain it Under a hair Sieve and sweeten to your Pallett with fine Loaf-Sugar and set it on a fire keeping it stirred all one way till it be a thick Cream.

ORANGE CREAM.

do. do.

ALMOND CREAM.

[ $\frac{1}{2}$  pound Jordan almonds, 1 qt. Cream.]

C. 1700. Author of the Journey to London, *The Art of Cookery*.  
In Imitation of Horace's Art of Poetry, p. 89.

Tis the Desert that graces all the Feast  
For an ill end disparages the rest:  
A thousand things well done, and one forgot,  
Defaces Obligation by that Blot.  
Make your transparent Sweet-meats truly Nice,  
With *Indian* Sugar and *Arabian* Spice:  
And let your various Creams incircled be  
With swelling Fruit just ravish'd from the Tree.

1709. *The Queen's Royal Cookery.*

By T. Hall, Free Cook of London.

London.

p. 173.

#### LEMON CREAM.

Take 1 pint of Barley-Water and 6 Eggs, leaving out half their Whites; beat and mix them well together, then squeeze in the juice of 3 Lemons, and the Peel of one pared very thin and cut into small pieces; sweeten to your Taste, and set it over a slow Fire. Keep stirring all the While, and when it is as thick as Cream strain it, and let it cool.

1709. *The Queen's Royal Cookery.*

By T. Hall, Free Cook of London.

London.

#### ALMOND CREAM.

Take  $\frac{1}{2}$  a pound of Jordan Almonds and blanch them, beat them in a mortar with 4 spoonfuls of Rose or Orange-flower water; then take 1 quart of Cream and put to the Almonds and stir them well together; strain through a Hair sieve and set it on a slow Fire and let it just boil. Take it off and sweeten it and put it out in little China dishes, and when cold serve it to the Table.

1709. *The Queen's Royal Cookery.*

By T. Hall, Free Cook of London.

London.

#### SACK CREAM.

Whilst 3 pts of cream is boiling on the Fire, beat the yolks of 8 or 9 eggs with some Sack, and put in your Skillet keeping it stirring till it come to a curd, then run it through a strainer and save your curd being severed from your whey, season it with Cinnamon, Ginger, Nutmeg, Sugar and Rosewater.



1723. *The Cook's and Confectioner's Dictionary.*

Revised & Recommended by John Nott, Cook to His Grace, the Duke of Bolton.

London.

[Recipe.] 209.

## CREAM.

Take yolks of 4 or 5 Eggs beat them well in a Stew-pan with a little Flour, pouring on Milk by degrees to the quantity of a Quart; then put in a small Stick of Cinnamon some candy'd and some green Lemon-peel cut small. Set the Cream on the Furnace; stir it continually that it do not stick to the Bottom. When it is boil'd, set a Dish upon the Furnace and pour the Cream into it and let it boil again till it sticks to the side of the Dish, then set it aside and sugar it well on the top, heat the Fire-shovel red hot and brown the Cream with it to give it a fine golden Colour.

1723. *The Cook's and Confectioner's Dictionary.*

Revised & Recommended by John Nott, Cook to His Grace, the Duke of Bolton.

London.

[Recipe.] 216.

## ITALIAN CREAM.

Take 2 quarts of milk, boil it with sugar, a little salt and a stick of cinnamon; when it is boiling, take a large dish and a sieve into which put the yolks of 10 new laid eggs; strain both eggs and milk through it 3 or 4 times; then put the dish into a baking cover, pour all into it, and put fire over and under till your Cream becomes very thick.

1723. *The Cook's and Confectioner's Dictionary.*

Revised and Recommended by John Nott, Cook to His Grace, the Duke of Bolton.

London.

[Recipe.] 217.

## LEMON CREAM.

Pare 3 fair smooth lemons and squeeze out the juice, cover it close for 2 or 3 hours; when it tastes of the peel put to it the yolks of 2 eggs and the whites of 4. Beat this well with 2 spoonfuls of orange-

flower water, then put a pint of fair water to all these, strain and sweeten, set it over a gentle fire, stirring it constantly till it is as thick as cream.

1723. *The Cook's and Confectioner's Dictionary.*

Revised and Recommended by John Nott, Cook to His Grace, the Duke of Bolton.

[Recipe.] 218.

London.

MAIDEN CREAM.

Take the Whites of 10 Eggs, whip them to a Froth; put them in a Sauce pan with Milk, Orange Flower-water and Sugar. Set a Plate over a Stow put in a little Cinnamon, beat up your Cream very well and pour it into the Plate. Then brown it with a red hot Shovel and serve it.

1724. *Collection of Above 300 Recipes.*

London.

part I, p. 59.

ORANGE CREAM.

Take 4 oranges and grate the Peel into a Pt. of water, then squeeze the Juice into the water; beat the Yolks of 4 Eggs very well and put it in the water; sweeten it very well with double refin'd Sugar; press all hard through a strong Strainer, set it on the Fire, and stir it carefully all one way 'till 'tis as thick as Cream.

1724. *Collection of Above 300 Recipes.*

London.

part I, p. 59.

ALMOND CREAM.

Take half a pound of good Almonds, blanch and beat them very fine, with Orange-flower water; take a Qt. of Cream boil'd cool'd and sweeten'd, put the Almonds into it, and when they are mixed strain it through a Canvas, then stir it over the Fire, 'till it thickens and pour it into Glasses; if you love it richly Perfum'd, put in a Grain of Ambergreese.

1724. *Collection of Above 300 Recipes.*

London.

part I, p. 61.

## POSTATIA-CREAM.

Take an Ounce of the Kernels of Postatia-Nut, beat them small with 2 spoonfuls of Orange-flower water, and 4 Yolks of Eggs; boil a Qt. of Cream, and mix all together. When the Cream is so cool it will not curdle the Eggs, thicken it over the Fire with great care, . . .

1724. *Collection of Above 300 Recipes.*

London.

part II, p. 28.

## WHITE LEMON CREAM.

Take almost a Pint of Water, and the Whites of nine Eggs very well beaten, and the Juice of four large Lemons or five if they be not large; then strain it through a Jelly Bag and put to it half a Pound of double-refin'd Sugar beat and sifted; set it on a soft Fire and keep it constantly stirring all one way, till it is as thick as Jelly; pour it out quick.

1724. *Collection of Above 300 Recipes.*

London.

part II, p. 29.

LEMON CREAM, *the Best Way.*

Take 3 smooth fair Lemons, pare them, and squeeze out the juice; cut the Peel in small Pieces, and put it to the Juice; for 2 or 3 hours cover it close; and when it tastes of the Peel add to it the Whites of 4 Eggs and the Yolks of 2, beat this well with 2 spoonfuls of Orange-flower water, then put all these to a pt. of fair water, and sweeten it with double-refin'd Sugar; set it over a gentle Fire and stir it carefully 'till 'tis as thick as Cream.

1724. *Collection of Above 300 Recipes.*

London.

part II, p. 29.

## CREAM FLUMMERY.

Take a pt. of cream, 3 spoonfuls of Rice Flower, very fine ground or beat, and sifted till it is small, 3 oz. of sugar, and 2 oz. of Almonds, beat small; beat them with some spoonfuls of milk for fear of oiling, the whites of 3 eggs beat; strain the cream and eggs to the almonds, and set it on the fire, and stir it all one way, till it is thick and smooth as a custard; then pour it into deep Glasses that when 'tis cold it may turn out in picked Shapes.

1725. *Court Cookery.*

London.

p. 194.

## MAIDS CREAM.

Take the Whites of 5 Eggs, whisk them to a Froth, and put them in a Saucepan with refin'd Sugar, Milk and Orange Flower Water; set your Plate on a Stove with a little Cinnamon, and pour your Cream when it's well beat into the Plate. When it is enough [done] brown it with a red hot Shovel or Iron.

1730. *The Complete Practical Cook.*

Charles Carter.

London.

p. 185.

## FOR LEMON CREAM.

Take the Lemon Peel of 2 or 3 Lemons and bruise it and steep it all Night in Cream or Milk: Boil it in the Morning and turn it with the Juice of Lemon; put in a little Orange flower water and a little Sack and sweeten it with fine Sugar and a Musk Confit or two. You may colour some of this as Jellies, and this may be iced likewise.

1739. *The House-keepers' Pocket-Book and Compleat Family Cook.*

Mrs. Sarah Harrison.

London.

p. 158.

#### LEMON CREAM.

Take the juice of 4 large Lemons and  $\frac{1}{2}$  pint of Water and a Pound of double refin'd Sugar beat fine, and the Whites of 7 Eggs and the Yolk of  $1\frac{1}{2}$  beat well; strain and set it over a gentle fire, skim and stir it all the While and when it is very hot, but not boiling, pour it into your Glasses.

[2 other recipes, one calling for 1 quart of Cream.]

1739. *House-keeper's Pocket-Book, etc.*

Sarah Harrison.

London.

p. 173.

#### SNOW CREAM.

Take a pt. of the thickest cream and sweeten to your taste; take the whites of eggs and beat to a Froth; then take a Sprig of Rosemary and beat it in as the Snow rises, take it off & lay it in the Dish.

1753. *The Compleat Housewife.*

E. Smith.

London.

p. 185.

#### LEMON CREAM.

Take 5 large lemons and squeeze out the juice, and the whites of 6 eggs well beaten, 10 oz. double-refin'd sugar beaten fine, 20 spoonfuls of spring water; mix and strain through a jelly bag, set it over a gentle fire, skim well; when it is as hot as you can bear your finger in it take off and pour in glasses.

1753. *The Compleat Housewife.*

E. Smith.

London.

p. 185.

ORANGE CREAM.

Take a pint of the juice of Seville oranges, put to it the yolks of 6 eggs, the whites of 4, and strain; add 1 lb. of sugar; set on the fire and put the peel of  $\frac{1}{2}$  orange into it, keep stirring and when almost ready to boil take out the orange peel, and pour it in glasses.

1765. *The Art of Cookery, Made Plain & Easy.*

By a Lady.

London.

p. 284.

RATAFIA CREAM.

Take 6 large laurel leaves, boil them in a Quart of thick cream; when it is boiled throw away the leaves; beat the yolks of 5 eggs with a little cold cream and sugar to taste, then thicken the cream with your eggs, set it over the fire again, but don't let it boil.

1765. *The Art of Cookery, Made Plain & Easy.*

By a Lady.

London.

p. 284.

A FINE CREAM.

Take a Pt. of cream, sweeten it to your taste, grate a little nutmeg, put in a spoonful of orange-flower water, and rose water, and 2 spoonfuls of sack, beat up 4 eggs, but only 2 whites; stir all together over the fire till it is thick.

1765. *The Art of Cookery, Made Plain & Easy.*

By a Lady.

London.

p. 283.

#### ALMOND CREAM.

Take a Qt. of cream, boil it with half a nutmeg grated, a blade or two of mace, a bit of lemon-peel, and sweeten it to your taste; then blanch  $\frac{1}{2}$  lb. of Almonds, beat them very fine with a spoonful of orange-flower or rose-water, take the whites of 9 eggs well beaten and strain them to your almonds, beat them together, rub through a coarse hair-sieve; mix with your cream, set it on the fire, and stir till it boils.

1765. *The Art of Cookery, Made Plain & Easy.*

By a Lady.

London.

p. 283.

#### BLANCHED CREAM.

Take a Qt. of the thickest, sweetest cream, season it with fine sugar & orange-flower water and boil it; then beat the whites of 20 eggs with a little cold cream, take out the treddles which you must do by straining it after it is beat, and while the cream is on the fire and boils, pour in your eggs, stirring it all the time one way till it comes to a thick curd, then take it up and pass through a hair-sieve, then beat it very well till cold.

1765. *The Art of Cookery, Made Plain & Easy.*

By a Lady.

London.

p. 281.

#### LEMON CREAM.

Juice and rinds of 3-4 Lemons, add the whites of 6 Eggs, beat well together, sweeten and cook over a gentle fire till thick.



## ORANGE CREAM.

Made with the yolks of 6 eggs, and the whites of 4.

## GOOSEBERRY CREAM.

1 Quart of gooseberry pulp, 6 eggs well-beaten, and a little butter, cooked all together.

1773. *The Experienced English Housekeeper.*

Elizabeth Raffald.

London.

p. 232.

## PISTACHO CREAM.

Take  $\frac{1}{2}$  lb. of pistacho nuts, take out the kernels, beat them in a mortar with a spoonful of brandy, put them in a tossing pan with a pt. of cream and the yolks of 2 eggs beat fine, stir it gently over a slow fire till it grows thick, then put it in a soup plate, when cold stick it all over with small pieces [of nuts].

1773. *The Experienced English Housekeeper.*

Elizabeth Raffald.

London.

p. 236.

## KING WILLIAM'S CREAM.

Beat the whites of 3 eggs very well, then squeeze out the juice of 2 large or 3 small lemons, take 2 ounces more than the weight of the juice of double refined sugar and mix it together with 2 or 3 drops of orange flower water and 5 or 6 spoonfuls of fair spring water; when all the sugar is melted, put in the whites of the eggs into a pan and the juice and set it over a slow fire, and keep stirring till you find it thicken, then strain it through a coarse cloth quick into the dish.

1790. *English Housewifery.*

Elizabeth Moxon.

Leeds.

p. 116.

## CHOCOLATE CREAM.

Take 4 oz. of chocolate more or less, grate it and boil it in a pint of cream, mill it well with a chocolate stick; take the yolks of 2 eggs and beat well, leaving out the strain, put to them 3 or 4 spoonfuls of cream, mix and set on the fire and stir until it thickens, but do not let it boil. Sweeten to taste and keep stirring till it be cold.

1790. *A Collection of Ordinances & Regulations for the Government of the Royal Household, etc., etc., also Receipts in Ancient Cookery.*

London.

[The recipes are of much earlier date than the publication, but the exact period is not specified.]

p. 463.

## CREME BOYLE.

Take creme of cove mylke, and zolkes of eyren beten, and saffron and medel alle togedur, and boyle hit that hit be stonding, and dresse hit up stondynge of leches in dishes and plant hit with floures of borage and serve hit forth.

1790. *A Collection of Ordinances & Regulations for the Government of the Royal Household, etc., etc., also Receipts in Ancient Cookery.*

London.

p. 447.

## CREM OF ALMONDE MYLK.

Take almonde mylk and boyle hit, and when hit is boylt take hit from the fyre and springe thereon a lytel vynegur; then take and cast hit on a clothe, and cast theron sugar, and when hit is colde gedur hit together, and leche hit in dysches and serve hit forthe.

1793. *The French Family Cook.*

Translated from the French.

London.

p. 244.

## ITALIAN CREAM.

Put 3 gills of milk into a stew-pan, and boil it, then add the peel of a lemon, some coriander seed, a bit of cinnamon, a little more than half a quartern of sugar, two or three grains of salt, and let it boil till half consumed; let it cool, and have ready in another stew-pan a little flour beat up with the yolks of 6 eggs; stir in your cream by little and little; strain through a sieve, and set in a dish in hot water over the fire till the cream be set. Color with a salamander.

[Number of recipes in this book, all using a little flour, and some rennet to make the cream set.]

1795. *Practice of Cookery, Pastry, &c., &c.*

Mrs. Frazer.

2d Ed.

Edinburgh.

## ALMOND CREAM.

Boil a choppin [qt.] of cream with cinnamon and lemon-peel, blanch and beat  $\frac{1}{2}$  lb. of sweet almonds with a little sugar; cast the whites of 6 eggs; mix them with the almonds and strain them through a sieve. Mix in the boiled cream gradually amongst them, and put on the fire stirring it all one way—sweeten to your taste and take out the cinnamon and lemon-peel.

1800. *Cookery & Pastry.*

Mrs. Maciver.

Edinburgh.

p. 114.

## SWEET ALMOND CREAM.

Boil a chopin of cream with cinnamon and lemon-peel; blanch and beat  $\frac{1}{2}$  lb. of sweet almonds; wet them with a little rose-water as

you beat them; beat the whites of 8 eggs very well, mix them with the almonds and thrust them through a searce, mix in the boiled cream gradually amongst them and put them on the fire, stirring all one way; do not let it boil; sweeten to your taste, taking out the sticks of cinnamon and the lemon-peel.

1800. *Cookery & Pastry.*

Mrs. Maciver.

Edinburgh.

p. 114.

CLEAR LEMON CREAM.

Pare 4 large lemons very thin; lay the parings into half a mutchkin of water; squeeze the juice of the lemons into it, and let it stand one minute; strain it off and boil it up with a pound of double refined sugar and a gill of rosewater; take the whites of 9 eggs—you must not whip them too much, else they will frothe; strain the whites though a searce, and mix them with the liquor by degrees for fear of curdling; put it on a very clear fire, let it be scalding hot and put it in glasses.

ORANGE CREAM.

Made the same way.

RATAFIA CREAM.

Laurel leaves boiled in cream, strained out and the cream mixed with egg yolks and sugar.

1900. *Boston Cook Book.*

Mary J. Lincoln.

The ingredients of the various creams in this typical cook book are given to illustrate the present use of the term *cream* in its old general use:

Page 360. Andermatt Cream.  $\frac{1}{2}$  cup rice, 3 cups boiling milk, 1 cup preserved fruits, 1 pint thick cream. Serve with sponge cake.

Page 355. Plain Bavarian Cream.  $\frac{1}{4}$  box gelatine, water, 1 pint cream, 1 dozen lady-fingers, sugar, vanilla, wine, boiling water.

Page 357. Norfolk Cream. 1 pound candied plums, plain Bavarian cream, one third of which is colored with cochineal, half a cup of cherries.

Page 377. Orange Cream for Cake. Rind of half, juice of one, orange, lemon juice, water, corn-starch, yolk of one egg, butter.

Page 377. Orange and Cocoanut Cream for Cake. One egg, one cup of whipped cream, sugar, cocoanut, orange.

Page 378. Cocoanut and Raisin Cream. One cup of raisins, half a cup almonds, half a cup of grated cocoanut, white of one egg beaten stiff.

Page 535. Coffee Cream. One pint milk, sugar, salt, coffee, junket tablet. Eat with sugar and cream.

Page 389. Cream for Cream Cakes and Eclairs. One pint milk, corn-starch, three eggs, sugar, salt or butter.

Page 375. Cream for Cream Pies. One pint milk, two eggs, sugar, salt, butter, flour, flavoring.

Page 346. Spanish Cream. Gelatine, eggs, sugar, salt, milk, white of three eggs, vanilla.

Page 346. Italian Cream. Same ingredients, differently mixed.

Page 534. Prune Cream. Prune juice, sugar, gelatine, water, one pint cream.

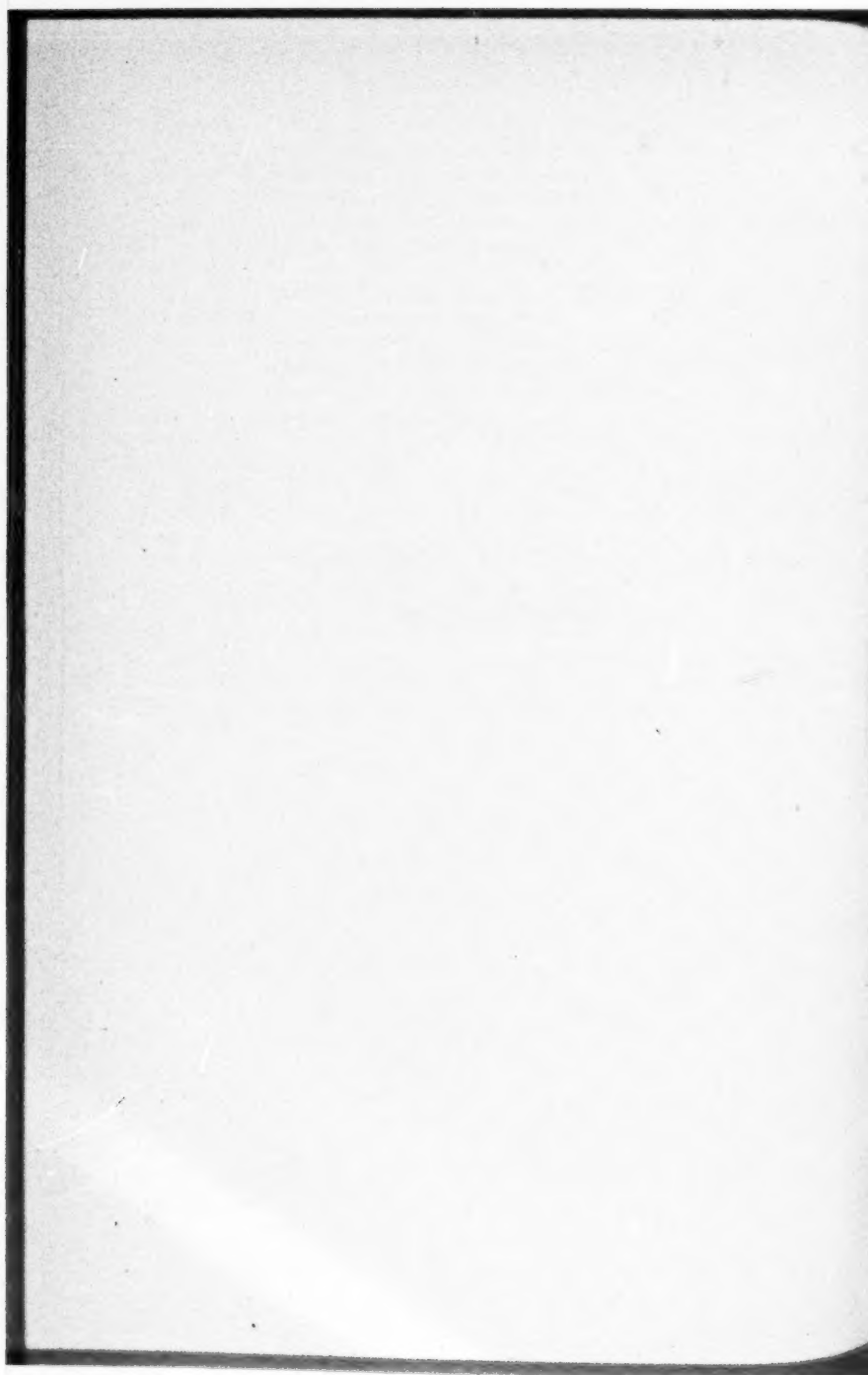
Page 345. Tapioca Cream. Tapioca, one pint milk, yolks of two eggs, sugar, salt, whites of two eggs, vanilla.

Page 349. Velvet Cream. Gelatine, sherry, lemon, sugar, one and a half pints of cream.

And so forth. All cook books contain recipes for creams covering a wide variety of mixtures, with and without cream of milk or milk, of the same character as in the 17th and earlier centuries.

II.  
ICE CREAM.

(69)





## II. ICE CREAM.

## A. DEFINITIONS FROM DICTIONARIES.

The same dictionaries are used as in the case of *cream* above.

Correction of the definitions in certain details will be found in the text (see 3.22), namely that the New English Dictionary, (cf. also Century Dictionary) in saying "Earlier term, *iced cream*" is not right if it is implied that *iced cream* necessarily preceded *ice cream*, and that this dictionary should have noted the 18th century British use of *ice cream* to include all ices in cook-book use; also, that the American dictionaries should have noted the universal American use of *ice cream* to cover all ices as a general class.

All the dictionaries attest the fact of the wide range of mixtures included under *ice cream*—mixtures made of cream of milk, milk or what we now call *custard*.

(1893) *New English Dictionary, Oxford.*

(*Ice*) 5. *a.* A frozen confection. Now with *an* and *pl.*

(In French the *pl. glaces* in this sense was admitted by the Acad. in 1762; but as late as 1825 it was asserted to be incorrect to say *une glace*.)

*Ice-cream.* A compound of flavoured and sweetened cream or custard, congealed by being stirred or revolved in a vessel surrounded by a freezing mixture. (Earlier term, *iced cream*.)

1913. *Century Dictionary and Encyclopedia.*

(*Ice*) 3. A frozen confection consisting (*a*) of sweetened and flavored cream, milk, or custard (cream-ice, ice-cream), or (*b*) of the sweetened juice of various fruits (water-ice).

(*Ice-cream* (Strictly *iced cream*) A confection made by congealing variously flavored cream or custard in a vessel surrounded with a freezing-mixture.

1913. Funk and Wagnall, *Standard Dictionary*, New York.

(*Ice*) 2. A frozen dessert, as ice-cream or water ice.

*Neapolitan ice*, ice-cream composed of several layers of various flavors.

*Ice-cream:* Cream, milk, or custard, sweetened and flavored, and frozen by a freezing-mixture, being usually agitated by a dasher in the process, to make it of uniform consistency.

*Neapolitan ice-cream*, same as *Neapolitan Ice*. See under *Ice*.

1913. *Webster's International Dictionary.*

(Ice) 2. A mixture of water, cream, custard, etc., sweetened, flavored, and artificially frozen.

(Ice-cream) Sweetened cream or custard flavored, as with fruit, chocolate, wine, etc., and beaten and frozen in a can which is rotated in a freezing mixture, usually of ice and salt.

## B. QUOTATIONS.

Quotations illustrating Continental practice, from which English practice was derived and which has continuously affected it, are given first, and then the English citations.

Attention is directed to the fact that the creams or mixtures used are of the same kind as before the practice of freezing came in; that the creams might be eaten frozen or unfrozen; and in particular to the clear evidence of the wide variety of mixtures used.

A few quotations from recent American cook-books are included to show the use of custard ice creams, and more particularly to attest the existence of the main class of creams made with custard, often called typically "Neapolitan ice cream." The whole range of American cook-books is, however, included by general reference in support of the application of the term *ice cream* in domestic and general practice to a wide range of mixtures with varied proportions of cream of milk, milk, eggs, etc.

1. FOREIGN QUOTATIONS ILLUSTRATING THE MEANING OF THE TERM  
*Ice Cream.*

1737. Pierre-Jacques Ribon *L'Ecole Parfaite Des Officiers De Bouche.*

Paris.

(Title of section) On the way to Freeze all sorts of Delicious "Waters" (eaux délicieuses).

(The "waters" are fruit juice mixtures, and they are frozen in bottles packed in ice and salt. The use of the word "eau" is perhaps doubtful, in that it may mean "water" in a similar sense to our "rose-water," etc., or fruit-juice. The mixtures are similar in composition to our water ices.)

1742. *Le Cuisinier Moderne.*

Vincent La Chapelle.

The Hague.

p. 220.

## CRÈME DE PISTACHE À LA GLACE.

Take a suitable quantity of pistache nuts; put them in boiling water to remove the skins, and plunge them into fresh water; dry them in a napkin and pound them with a little sweet cream. Put into a saucepan 1 or 2 pints of cream, season with sugar, stick of cinnamon and the rind of a lemon: when this boils, add your pistache nuts and the yolks of 5 eggs well beaten. Put it back on the fire to cook the eggs, and when cooked add little by little the juice of spinach to color it. Strain through a cloth and put it in freezing moulds.

1742. *Le Cuisinier Moderne.*

Vincent La Chapelle.

The Hague.

p. 220.

## TOURTES À LA GLACE.

Freezing moulds of tin are needed, one or two feet in height and five or six inches round. For a Tourte à la glace take at least a pint of cream, put it in saucepan with a good-sized piece of sugar and the rind of a lemon; boil it, add 3 yolks of eggs to a pint, a stick of cinnamon as big as your finger and boil till they are well mixed. Put it through a sieve or bolting-cloth, and let it cool, then freeze it. . . . Take apricots cut in half peeled and powdered with sugar, put them into a freezing tin, and when your cream is frozen, serve it on a crust of almond paste and put your apricots on top.

1742. *Le Cuisinier Moderne.*

Vincent La Chapelle.

The Hague.

p. 221.

## CRÈME DE CHOCOLAT À L'ITALIENNE.

Put 3 or 4 goblets of water into a chocolate pot, with  $\frac{1}{2}$  or  $\frac{3}{4}$  of a pound of chocolate & a piece of sugar, and boil. Empty it into a saucepan and mix with it 1 or 2 yolks of eggs, cooking it a little with the eggs. Whip it up, and as the mousse forms put it in a sieve. Put the mousse into glasses, set them in moulds and freeze.

1742. *Le Cuisinier Moderne.*

Vincent La Chapelle.

The Hague.

p. 221.

## CRÈME AU CHOCOLAT.

Put into a saucepan a couple of pints of cream, some sugar, a stick of cinnamon, the rind of a lemon and half a pound of chocolate: bring it to a boil stirring well with a wooden spoon. Strain through a cloth, let it cool, and beat it well with an egg whip. As it becomes a mousse, take it up on a hair sieve and set on a plate to drain. Continue until you have enough to make *fromages à la glace* or to fill small moulds. You can make *fromages à la glace* without whipping the mixture.

1742. *Le Cuisinier Moderne.*

Vincent La Chapelle.

The Hague.

p. 222.

## TURK'S HEAD À LA CRÈME À LA GLACE FOUETTÉE.

Whip 8 or 10 pints of sweet cream, and as the mousse forms put it in a sieve. When you have as much as you need, add a moderate

amount of powdered sugar, mix it in with a skimmer, put it in a Turk's head mould and freeze it.

You can also use sour cream in place of sweet; it is as good in its way as the other.

1742. *Le Cuisinier Moderne.*

Vincent La Chapelle.

The Hague.

p. 234.

CRÊME DE CITRON.

Cook some lemons in water, mash them and put them into a saucepan with sugar, a bottle of Rhine wine or Champagne. Test the flavor, and let it cool. Add the yolks of 12 eggs, and strain through a cloth. Cook in a bain-marie. This cream may also be frozen. Oranges may be prepared in the same way, and with cream in place of wine.

1742. *Le Cuisinier Moderne.*

Vincent La Chapelle.

The Hague.

p. 234.

CRÊME D'ABRICOTS.

Cook the apricots in sugar and strain through a sieve. Add good Rhine wine or Champagne, let it cool and then add the yolks of eggs: for a small dish at least a dozen. [Used like the Lemon Cream either as a cooked custard or a frozen dessert.] Peaches and Plums may be treated the same way.

1747. *Arte de Roposteria.*

Jaun de La Mata.

Madrid.

p. 139.

ESPUMA DE LECHE.

Dissolve half a pound of sugar in a quarter of a gallon of good cow's milk with a little essence or a few pieces of cinnamon, leaving it to infuse awhile so that the cinnamon will impart its flavor to the

mixture. Then strain it through a napkin or sieve into a pan, adding to it half a pint of cream and beating it with a chocolate-stick until it froths, and continuing until there is enough for a dish.

This same froth may also be frozen in glasses made for the purpose so that they can be plunged in snow, in the same manner as Iced Beverages.

Many people make this Froth with sheep's milk in place of cow's milk, but it is necessary to cook this with eggs, about half a dozen to quarter of a gallon of milk, with some cream also if you wish, but that is not essential.

1759. Francois Toppens *La Cuisiniere Bourgeoise*, Brussels.

*Ice of all kinds.* In winter you serve winter syrups—and in summer you take waters for summer (eaux d'ete). Place these waters in ice-moulds, and, as they freeze, they should be stirred from time to time. When they are ready, serve them in goblets.

1759. *La Cuisiniere Bourgeoise*.

Brussels.

p. 449.

FROMAGE À LA GLACE.

Take a pint of double cream if you wish or any other kind that is good, half a pint of milk, the yolk of one egg, and three quarters of a pound of sugar; let them come to a boil 5 or 6 times and take it off the fire. Add some flavoring like orange-flower, bergamot, or lemon and put it in your mould and freeze it.

1768. *Le Cannameliste Français*.

Sieur Gilliers.

Nancy & Paris.

p. 150.

MOUSSE.

Take 2 pints of sweet cream, add to it 1 large cup of strong coffee or chocolate, and powdered sugar to your taste; mix well and strain into another dish. Whip the cream and as the mousse rises, take it up with a skimmer and put into a sieve to drain. Continue until you have enough for your glasses, fill them as full as possible and plunge in a pail of ice. This can be made of cream alone, letting some parings of lemon infuse in it, or flavoring with essences.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

p. 152.

## NEIGE [ICE CREAM.]

*Neige de crème ordinaire.*

Take 12 fresh eggs, separate the yolks and whites. Strain the yolks through a cloth, mix them with 2 pints of sweet cream; add a little lemon peel; cook over a slow fire stirring until it begins to rise; take it off and add powdered sugar to taste, and when it is dissolved pour the cream through a strainer into a dish. Let it cool and then freeze.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

p. 152.

## [PISTACHE ICE.]

*Neige de pistaches sans crème.*

When your pistache nuts have been shelled, pound them well with 1 or 2 slices of lime, adding a little water to prevent them from turning to oil; put them through a sieve with a spoon, mix with clarified sugar and a little water and freeze.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

p. 152.

## [LEMON ICE.]

*Neige de citrons.*

Take 12 fine lemons, dip in fresh water and dry at once. Have a piece of loaf sugar and grate 6 lemons on it, take off with a knife the part touched by the fruit, and put it in a pan with 1 pint of water, and squeeze in the juice of the lemons, adding clarified sugar to your taste; strain the whole through a cloth and put it in the freezer.

All fruit ices should have a couple of glasses of fine wine added to them.



1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

[ORANGE ICE.]

p. 153.

*Neige d'Orange.*

Take 12 oranges, grate the rinds as with the lemons, squeeze the juice and put into a bowl with a pint of water, and the grated rinds, together with the sugar on which they were grated; add the juice of 4 lemons, sweeten to taste, and strain through a cloth, . . . freeze. When partly frozen add a glass of gooseberry syrup.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

[LIME ICE.]

p. 153.

*Neige de cedra.*

Take 7 or 8 limes; grate the rinds on sugar; cut them in quarters and boil them until they are soft; cover with cold water, dry and put through a sieve; take this marmalade and mix in the grated rinds and a pint of water, add the juice of 12 lemons, sweeten to taste with clarified sugar, strain and freeze.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

[ORANGE-PEAR ICE.]

p. 154.

*Neige de bergamotte.*

Take 4 orange-pears and grate on sugar, put the grating into a dish with 2 pints of water; squeeze in the juice of 12 lemons, sweeten to taste, strain and freeze.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

p. 154.

## [APPLE ICE.]

*Neige de Pommes.*

Take 7 or 8 pippins or other apples, according to the shape of your moulds; peel and core them, and let them cook in a pint of water until they are soft; put them through a colander. Mix this marmalade with a little water, add the juice of 2 lemons and sweeten to taste, strain and freeze.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

p. 155.

## [PEACH ICE.]

*Neige de Pêches.*

12 ripe peaches; take off skins and stone them, put them through a sieve, mix the marmalade with a pint of water, and squeeze in the juice of 3 lemons, add sugar, strain and freeze.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

p. 156.

RASPBERRY ICE.  
STRAWBERRY ICE.  
CHERRY ICE.

2 or 3 pounds of fruit mashed through a colander, mixed with water and sugar, then frozen. The raspberry and strawberry have 1 pint of gooseberry juice added. The cherry ice has the juice of 2 lemons.

## POMEGRANATE ICE.

8 pomegranates, seeded and mashed through a colander. Add to the juice a bottle of Burgundy and the juice of 4 oranges, . . . etc.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

[APRICOT ICE.]

p. 156.

*Neige d'Abricots.*

24 apricots; after making them into marmalade pound 5 or 6 of the apricot kernels and mix in with it. Add the juice of 4 lemons, and finish like the other ices.

PLUM ICE.

do. do.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

[PEAR ICE.]

p. 156.

*Neige de poires.*

Take any kind of pear; cut them in two, stew them and cover with cold water when taken from the fire; then pare and core them, and put through a colander. Add a pint of water and the juice of 4 lemons; sweeten, strain and freeze.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

FILBERT ICE  
OR HAZEL-NUT ICE.

p. 158.

*Neige d'avelines de noix.*

1 pound of one or the other kind of nut; clean and dry them, crack and set them in a moderate oven to give them a pale brown color. When cold pound them well with a little cream; put the paste through the colander, mix it with a pint of cream, cook a little, sugar to taste, . . . etc.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

p. 159.

## [ARTICHOKE ICE.]

*Neige d'artichauts.*

3 or 4 artichokes, using only the bottoms. Cook them soft, mash them with a quarter of a pound of pistache nuts, one-fourth of a candied orange and a little cream. Mix the paste with a pint of cream, sweeten and freeze.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

p. 159.

## CHESTNUT ICE.

*Neige de marrons.*

Take off the outer shell of 24 chestnuts, bake them in the oven, put them into a napkin for a moment to get thoroughly heated; take off the inner skins, and pound them with a little cream. Mix the paste with a pint of cream and cook slightly, sweeten . . . and freeze.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy &amp; Paris.

p. 160.

## [SHERRY ICE.]

*Neige de vin d'Espagne.*

Have your freezing mould in ice, put into it 2 bottles of sherry wine, two glasses of water and 2 glasses of Champagne, with 2 cups of clarified sugar, mix and freeze.

1768. *Le Cannameliste Français.*

Sieur Gilliers.

Nancy & Paris.

p. 161.

BITTER ALMOND ICE.

SAVOY BISCUIT ICE, ETC.

*Neige de biscuits d'amandes amères, de biscuits à la cuiller &c.*

Take one or the other of these cakes and dry them in the oven, pound them and put through the colander. Prepare a cream mousse without flavoring, put it in the freezer, and when partly frozen put in what you passed through the colander and mix lightly, place it in moulds and return to the ice.

1772. *Dictionnaire portatif de Cuisine d'Office et de Distillation.*

Paris.

p. 175 & p. 96 [new paging at letter M.]

LEMON ICE & ORANGE ICE IN SHAPES.

*Citrons (Glace de).*

Take marmalade of lemons and freeze as other ices, put it in moulds shaped like lemons, wrapped in paper and replace in ice.

*Orange Glaces en Fruits.*

Take orange marmalade and freeze it, put into the moulds and replace in ice.

1772. *Dictionnaire portatif de Cuisine d'Office et de Distillation.*

Paris.

p. 127.

[PEACH ICE, ETC.]

*Pêches (Cannelons de).*

Take ripe peaches, skin them and mix with a little water; strain through a colander pressing them well. Add 1½ pounds of sugar to a pint of juice, freeze, and put in moulds.

*Pêches (Glace de).*

Take very ripe peaches, skin them, mix with a little water, and let them infuse awhile; then strain through a colander pressing them well. Add a good deal of sugar and some of the pulp, and freeze.

1772. *Dictionnaire portatif de Cuisine d'Office et de Distillation.*

Paris.

p. 110.

## [COFFEE CREAMS, ETC.]

*Café (Cannelons de).* Mix 6 cups of clear, strong coffee with 1 pint of cream and sugar, put it in a mould, and work it in a freezer, . . . 1 pound of sugar in all.

*Café (Fromage de).* Put 6 ounces of coffee into a pint of water and boil and clear it as usual; boil 1 pint of cream, add 1 pound of sugar and your coffee; mix well and let it boil once or twice stirring all the time. Freeze.

*Café (Mousse de).* Make your coffee as for the Cannelons [*supra*]. Beat up the yolks of 6 eggs; add about 1 pint of cream and 1 pound of sugar; mix on the fire without boiling. When well mixed put it into goblets for the purpose, and put them in ice. If your mousse does not rise sufficiently add a little white of egg.

1772. *Dictionnaire portatif de Cuisine d'Office et de Distillation.*

Paris.

vol. 2, p. 38.

## MOUSSE DE CAFÉ.

Make some clear, strong coffee; add the yolks of fresh eggs, some cream and sugar. Mix on the fire without boiling, and then whip it well. Finish as with other mouses.

1772. *Dictionnaire portatif de Cuisine d'Office et de Distillation.*

Paris.

vol. 2, p. 38.

## MOUSSE À LA CRÈME.

Boil some cream with orange-flower water and sugar. When it is cold and well whipped, fill glasses or cups made for the purpose, and plunge in ice.

1772. *Dictionnaire portatif de Cuisine d'Office et de Distillation.*

Paris.

[APRICOT ICE.]

p. 6.

*Abricots (Cannelons de).*

Take 20 ripe apricots; take out the kernels and crack them; mix the fruit with about 3 half pints of water, and let it steep for two hours, then strain it pressing well to get out all the juice. Add about 1 pound of sugar, and put the mixture into the freezer, and when it is frozen put it in moulds.

1772. *Dictionnaire portatif de Cuisine d'Office et de Distillation.*

Paris.

[CHOCOLATE ICE CREAM, ETC.]

p. 162.

*Chocolat (Cannelons de).*

Boil 5 cups of chocolate with 1 pint of cream, and when sufficiently cooked freeze in a mould.

p. 164.

*Chocolat (Fromage de).*

Mix 6 ounces of powdered chocolate with a little water, add the yolks of 5 eggs, 3 quarters of a pound of sugar, 1 pint of cream. Put on the fire but do not let it boil. Freeze and put into moulds.

*Chocolat (Glace de).*

Boil  $\frac{1}{2}$  pound of chocolate with 1 pint of cream, the yolks of 4 eggs and a great deal of sugar, and proceed as with the *cannelons de chocolat*.

*Chocolat (Mousse de).*

Mix some chocolate with a little water add some yolks of eggs and a good deal of sugar and some cream. Heat the mixture but do not allow it to boil. Let it cool, and whip it with an egg beater. If the mousse does not make readily, add the white of egg. Put it into glasses and bury in ice.



1772. *Dictionnaire portatif de Cuisine, d'Office et de Distillation.*

Paris.

p. 274.

[STRAWBERRY ICE, ETC.]

*Fraises (Cannelons de).*

Mash 1 quart of gooseberries with 3 quarts of strawberries, mix with water and a great deal of sugar, strain and freeze in *cannelon* moulds.

*Fraises (Fromage de).*

Mash about 1 pound of fine strawberries, mix them with 1 pint of cream and 1 pound of pulverized sugar. Let it stand an hour, strain and freeze in a mould.

1772. *Dictionnaire portatif de Cuisine, d'Office et de Distillation.*

Paris.

p. 276.

[RASPBERRY ICE.]

*Framboises (Cannelons de).*

Crush with the raspberries 1 quart of gooseberries. Mix them with water and a great deal of sugar; pass the mixture through a colander, and freeze.

1772. *Dictionnaire portatif de Cuisine, d'Office et de Distillation.*

Paris.

p. 199.

[ICE CREAM.]

*Crème (Glace de).*

Boil a few sweet almonds in 1 pint of cream for a minute or two; take them out, add a little orange-flower water and some conserve, put in  $\frac{1}{2}$  pound of sugar and the grated rind of one whole lemon, mix with the cream and let it stand a quarter of an hour. Strain and freeze.

*Crème glacée.*

To  $\frac{1}{2}$  pint of cream add about 1 quart of milk  $\frac{1}{2}$  pound of sugar,  $\frac{1}{2}$  teaspoonful of orange-flower water. Put it into a suitable dish and freeze.

85

1772. *Dictionnaire portatif de Cuisine, d'Office et de Distillation.*

Paris.

p. 357.

GREEN GRAPE ICE.

*Verjus (Canelons de)*

Squeeze out the juice from green grapes and strain through a cloth; mix with an equal quantity of water, add  $\frac{1}{2}$  pound of sugar to a pint of liquid, freeze in *canelons* moulds.

*Verjus (Glace de).*

Take grapes almost ripe, mash and press through a colander, add a great deal of sugar, strain and freeze.

1791. *Le Confiturier.*

Paris.

p. 288.

FROMAGE GLACÉ.

Take three quarts of milk and one quart of cream, put it on the fire with sufficient sugar and two lemon rinds cut in strips. Let it cook, stirring all the time until it begins to thicken, then turn it into a silver dish: when it is cool put it into the freezing mould, and place it in a bucket full of ice. "You can tell when it is frozen by trying it with your finger."

1794. *Wienerisches bewahrtes Kochbuch.*

By Ignaz Gartler.

Edited & Improved by Barbara Hikmann.

Vienna.

p. 464.

No. 1294. [FROZEN GREEN GRAPE JUICE.]

*Agrass Gefrornes.*

Take as many green grapes as you choose, squeeze out the juice till you have enough, add sugar to it and 4 lemons, with some water, and then freeze it.

1794. *Wienerisches bewahrtes Kochbuch.*

By Ignaz Gartler.

Edited &amp; Improved by Barbara Hikmann.

Vienna.

p. 465.

No. 1300.

[CHOCOLATE CREAM.]

*Chokoladengefrornes.*

Mix together the yolks of 4 eggs,  $\frac{1}{4}$  pound of powdered Chocolate and  $\frac{1}{8}$  pound of sugar, cook a pint of cream with  $\frac{1}{4}$  ounce of whole vanilla bean, mix the eggs with the cooked cream and put through a hair sieve. Freeze like other creams.

1794. *Wienerisches bewahrtes Kochbuch.*

By Ignaz Gartler.

Edited &amp; Improved by Barbara Hikmann.

Vienna.

p. 467.

No. 1304.

STRAWBERRY ICE.

*Erdbeergefrornes.*

Mash strawberries and extract all the juice, mix it with sugar, and freeze it. In the same way raspberries, mulberries, etc. may be frozen.

1794. *Wienerisches bewahrtes Kochbuch.*

By Ignaz Gartler.

Edited &amp; Improved by Barbara Hikmann.

Vienna.

p. 467.

No. 1306.

[VANILLA ICE.]

*Faniliegefrornes.*

Cook some vanilla in Cream and let it cool, add sugar to taste, and freeze.

1794. *Wienerisches bewahrtes Kochbuch.*

By Ignaz Gartler.

Edited and Improved by Barbara Hikmann.

Vienna.

p. 470.

No. 1314.

[LEMON ICE.]

*Limonegefrornes.*

Rub 12 lemons on  $\frac{1}{4}$  pound of loaf sugar, and add to it the juice of them all, with two teacups of water, cook it and let cool, put it through a sieve and freeze.

1794. *Wienerisches bewahrtes Kochbuch.*

Ignaz Gartler.

Edited &amp; Improved by Barbara Hikmann.

Vienna.

p. 472.

No. 1322.

[PEACH ICE.]

*Pfirsichgefrornes.*

Peel and mash through a colander good ripe peaches, and for a pound of pulp add  $\frac{1}{2}$  pound of sugar and 2 cups of Rhine wine, the grated rind of one lemon and the juice of three, mix with a cupful of boiling water and put it through a hair sieve, etc. . . .

1794. *Wienerisches bewahrtes Kochbuch.*

Ignaz Gartler.

Edited &amp; Improved by Barbara Hikmann.

Vienna.

p. 473.

No. 1324.

[PISTACHE ICE.]

*Pistazengefrornes.*

Put a pint of cream in an earthen dish and boil it, take  $\frac{1}{2}$  pound of pistache nuts pounded fine, mix them with sugar, one whole egg,

and the whites of 5 eggs, pour in the hot cream, mix and stir until it begins to thicken, cool and freeze.

1794. *Wienerisches Bewahrtes Kochbuch.*

Ignaz Gartler, Edited & Improved by Barbara Hikmann.

Vienna.

p. 473.

No. 1325.

[ORANGE ICE.]

*Pomeranzengefrornes.*

Grate 6 oranges and 4 lemons on 1 pound of loaf sugar add 2 tea-cups of Maderia wine and one cup of boiling water to the sugar, and proceed as with other ices.

1794. *Wienerisches Bewahrtes Kochbuch.*

Ignaz Gartler, Edited & Improved by Barbara Hikmann.

Vienna.

p. 475.

No. 1331.

[CHERRY ICE.]

*Wechselgefrornes.*

Take Spanish or ordinary cherries remove the pits, let them stand over night to bring out the flavor [probably means in water, does not say so], then strain through a cloth sweeten to taste and freeze.

1794. *Wienerisches Bewahrtes Kochbuch.*

Ignaz Gartler, Edited & Improved by Barbara Hikmann.

Vienna.

p. 467.

[QUINCE ICE.]

Cook the quinces in water, let them drain and mash them; to 1 pound of this marmalade take  $\frac{3}{4}$  pound of sifted sugar, 2 wine glasses of Malaga wine, the yellow rind of a lemon and the juice of two, strain this once and freeze as other ices.

1794. *Wienerisches Bewahrtes Kochbuch.*

Ignaz Gartler, Edited &amp; Improved by Barbara Hikmann.

Vienna.

p. 472.

## [CREAM ICE.]

No. 1321.

(Literally "thick milk Ice".)

*Papinegefrornes.*

Boil 1 pint of cream and when it is cold, mix it with the yolks of 9 eggs well beaten, the rind of a lemon rubbed on sugar, a stick of whole Cinnamon, a quarter of a pound of sugar, cook all together till it begins to thicken, then put it through a hair sieve, and freeze. When half frozen a drop of oil of bergamot may be added.

1805. *Almanach des Gourmands.*

Paris.

Vol. 2, p. 227.

## DU FROMAGE, ETC.

This subject would be incomplete if we said nothing about *Fromages glacés*, although it is a mistake to give this name to all kinds of ices prepared in moulds. We speak of Strawberry *Fromage glacé*, or Apricot, or Gooseberry, although they contain not a drop of cream. That is one of the idiosyncrasies of our language.

Whatever they are made of these *Fromage glacés* in forms are the prettiest of desserts.

2. ENGLISH QUOTATIONS ILLUSTRATING THE MEANING OF THE TERM  
*Ice Cream.*1769. *The Experienced English Housekeeper.*

Elizabeth Raffald [1773].

London.

p. 233.

## TO MAKE ICE CREAM.

Pare, stone and scald twelve ripe apricots, beat them fine in a marble mortar, put to them 6 ounces of double refined sugar, a pint of scalding cream, work it through a hair sieve, put it into a tin that has a close cover, set it in a tub of ice broken small, and a large quantity of salt put amongst it. When the cream grows thick round the edges, stir it and set it in again till it grows quite thick. When your cream is all froze up take it out of your tin and put it in a mould . . . in another tub of ice and salt. . . .

1786. *The Complete Housekeeper and Professed Cook.*

Mary Smith.

Newcastle.

p. 299.

## ITALIAN ICE CREAM.

Boil 1 pint of cream with coriander seeds, a stick of cinnamon, a piece of lemon skin, for 10 minutes, sweeten with loaf sugar, strain, cool and freeze.

1786. *The Complete Housekeeper and Professed Cook.*

Mary Smith.

Newcastle.

p. 299.

## SHADDEROT CREAM.

Pare 2 lemons very thin and put into 1 pint of water, add the juice and let stand one hour. Strain and sweeten with clarified sugar, put to it a little essence of shadderot to give a fine flavor then put it in the ice-well. . . .

1786. *The Complete House-keeper & Professed Cook.*

Mary Smith.

Newcastle.

p. 299.

## BROWN BREAD ICE.

Take  $\frac{1}{2}$  pound of brown bread crumbs, put them into  $1\frac{1}{2}$  pints of good thick cream, sweeten to your taste with clarified sugar, put it into an ice-well, . . . &c. Biscuit ice may be made the same way.

1786. *The Complete House-keeper & Professed Cook.*

Mary Smith.

Newcastle.

p. 298.

## RASPBERRY ICE CREAM.

Mix  $\frac{1}{2}$  pound of raspberry jam in 1 pint of thick cream, add to it  $\frac{1}{2}$  teaspoonful of prepared cochineal to colour, strain it through a sieve to take out the seeds and put it in a tin or lead mould that will hold 2 quarts, which is generally called an ice-well, and put in a pail of broken ice, . . .



1786. Mary Smith, *The Complete Housekeeper*, New Edition, pp. 301 ff.

*Orange ice cream.* Squeeze the juice of three Seville oranges into a bowl with a pint of water, the rind of one orange, and as much sugar as will sweeten it; let it stand for two hours, strain it, put it into an ice-well, and freeze it; then put it into leaden orange moulds, lap them up in paper, put them into a pail with ice and salt under and over them, and let them stand two hours or more; dip them in water, turn them out upon a plate, and garnish them with green leaves.

*Peach ice cream.* Put half a pound of peach jam into a pint of water, add to it the juice of two lemons, mix it well, and strain it through a sieve; if it is not sweet enough add to it a little clarified sugar; put it into an ice-well, and freeze it pretty stiff; then put it into peach moulds, lap them up in paper, put them into a pail with ice and salt under and over them, and let them lie two hours to stiffen. When you want to use them, dip them in cold water, turn them out on a plate, colour them with a little prepared cochineal, and garnish them with green leaves.

*Ice cream of apricots.* Pare and stone fourteen apricots, put them into a preserving-pan with three-quarters of a pound of loaf-sugar, and a pint and half of water; set it over the stove to boil for twenty minutes; when they are boiling, bruise them with a spoon, take them out, and rub them through a hair sieve into a bowl:—when the apricots are cold, put to them one pint of cream, mix it well together, put it into the ice-well, and freeze it pretty stiff; then put it into apricot moulds, lap them in paper, and put them in a pail with some ice and salt under and over them; then let them lie two or three hours to freeze. When you want them, dip them in cold water, turn them out on plates, colour them with cochineal to look like apricots, and garnish them with green leaves.

*Ice cream another way:* Squeeze the juice of eight sweet oranges into a bowl, add to it half a pint of water, and as much sugar as will sweeten it; strain it through a sieve, put it into an ice-well, and freeze it till it is stiff; put it into a lead pine-apple mould, lap it well up in paper, put it into a pail of ice, and salt under and over it, and let it stand for three hours. When you want it, dip your pine-apple in cold water, turn it out on a plate, green the leaves of the pine-apple with spinach juice, and garnish it with green leaves. You may put this cream into melon and pear moulds. If a melon, you must green it with spinach juice;—if a pear mould, you must streak it with red.

1791. *The Practice of Cookery, Pastry, Pickling, Preserving, &c.*

Mrs. Frazer.

Edinburg & London.

p. 133.

ICE CREAMS.

Apricot Ice.

Pare and stone a dozen and a half of ripe apricots; cut them in small pieces and throw them in a sieve; squeeze them very well with a spoon and add three-quarters of a pound of clarified sugar: take the kernels out of the shells and pound them fine in a mortar, moistening them with water; then mix this with your apricots and if the mixture is too thick thin it with the juice of 2 or 3 lemons and a little more water; then put it in your jelling-pot, etc., etc. [directions about freezing]. You may do peaches the same way.

Strawberry Cream Ice.

Take a pound of preserved strawberries; squeeze them through a sieve; boil a chopin [pint] of cream with a piece of sugar; mix this among your strawberries and pass the whole through your searce again; then ice it as before. All preserved fruits may be done the same way.

p. 134.

Pine Apple Ice.

Take what number of them you may have occasion for and pare them; cut them small and beat them in a mortar; squeeze them through a cloth; pound and squeeze them till you have got the whole of them through; add to it the juice of 4 lemons, and clarified sugar boiled to a pearly height. If it is too thick add some water, and put the whole through a fine searce. Ice it as before.

1792. *The London Art of Cookery.*

John Farley.

London.

p. 337.

ICE CREAM.

Take 12 ripe apricots, pare stone and scald them, and beat them fine in a marble mortar. Put to them 6 ounces of double refined sugar, a pint of scalding cream, and work it through a hair sieve. Put it into a tin that has a close cover, and set it in a tub of ice broken small, and a large quantity of salt put among it. Etc.

1796. *The Art of Cookery.*

Mrs. [Hannah] Glasse.

London.

p. 323.

To Make ICE CREAM.

Pare and stone 12 apricots and scald them, beat them fine in a mortar, add to them 6 ounces of double refined sugar and a pint of scalding cream and work it through a sieve. [Directions for freezing follow.] You may do any sort of fruit the same way.

[Conjectural date 1818, in N. Y.

Library, but probably earlier.]

1818? *New London Family Cook.*

Duncan Macdonald.

London.

p. 348.

BARBERRY ICE CREAM.

Put a spoonful of barberry jam into a basin with 1 pint of cream; squeeze in the juice of 1 lemon; add cochineal to color it; put it into a freezing-pot and cover it, and set in a pail of ice, . . .

Apricot, raspberry, strawberry and most other fruits may be iced in the same way.

BARBERRY WATER ICE.

Put a spoonful of barberry jam into a basin; squeeze in one lemon add a pint of water and a little cochineal to color it; pass it through a sieve and freeze it. Be careful that it freezes thick and smooth like butter before you put it in your moulds.

RASPBERRY AND STRAWBERRY WATER ICE.

The same way.

PINEAPPLE WATER ICE.

Take 2 gills of pineapple syrup, squeeze in the juice of 2 lemons and add a pint of water.

CHINA ORANGE WATER ICE.

Rasp 1 China orange, squeeze in the juice of 3, and 1 lemon, add 2 gills of syrup and  $\frac{1}{2}$  pint of water. Strain and freeze it thick and rich.

1900. *Boston Cook Book.*

Mary J. Lincoln.

p. 862 ff.

ICE-CREAM, No. 1 (Philadelphia Ice-Cream).

2 quarts cream; if thick, add 1 pint milk.

2 cups sugar.

2 tablespoonfuls vanilla.

This is the simplest, and to many the most delicious, form of ice-cream. Scald the cream; melt the sugar in it, and flavor when cool. Freeze as directed above. The cream should be very sweet and highly flavored, as both sweetness and flavor are lessened by freezing. To make it lighter and more delicate, whip the cream until you have a quart of froth, and add the froth after the cream is partly frozen. Many prefer to add the whites of eggs, beaten till foamy, but not stiff. Use two, three, or four eggs to each quart of cream. The proportion of sugar should vary according to the flavoring used.

#### ICE-CREAM, No. 2 (Neapolitan Ice-Cream).

1 quart milk.  
(6 or 8 eggs yolks.)  
1 cup sugar.  
1 pint to 1 quart cream.  
Sugar to taste.  
Flavoring.

Make a boiled custard with the milk, sugar, and the yolks of the eggs. Cook it slightly till smooth, but not curdled. Strain, and when cool add the cream, sugar to make it sweet, and any flavoring desired. The custard, when made with cream instead of milk, makes the richest kind of ice-cream. If cream cannot be obtained, beat the whites of the eggs till foamy, and add them just before freezing. No matter how many eggs are used, a little cream, if not more than half a cupful, is a decided improvement to all ice-creams. It is better to make sherbert, or fruit and water ices, than an inferior quality of ice-cream with milk.

#### ICE-CREAM, No. 3 (Miss Parloa).

1 pint milk.  
1 cup sugar.  
2 tablespoonfuls flour.  
1 saltspoonful salt.  
2 eggs.  
1 pint to 1 quart cream.  
 $\frac{1}{2}$  to 1 cup sugar.  
1 tablesp. flavoring extract.

Boil the milk. Mix the sugar, flour and salt; add the whole eggs, and beat all together. Add the boiling milk, and when well mixed turn into the double boiler, and cook twenty minutes, stirring constantly till smooth; after that, occasionally. When cool, add the cream, flavoring, and sugar to make it quite sweet. This makes a smooth and delicious cream; and if the milk be boiling and the custard cook fully twenty minutes, there will be no taste of the flour.

[Mrs. Lincoln follows the above staple recipes with a number of variants based upon them, different in flavoring, additional ingredients such as nuts, cake or bread crumbs, etc., and in mode of serving.]

1910. *Manual for Army Cooks.*

Prepared under the Direction of the Commissary-General, U. S.  
Army.

U. S. War Department, Document No. 379, Office of the Commissary-General.

p. 117.

## [Recipe] 407. ICE CREAM (1 gallon).

Ingredients used:

2½ quarts water.

3 ounces flour.

1½ pounds sugar.

10 eggs.

¼ ounce extract.

2 12-ounce cans evaporated milk.

Boil 2 quarts of water and add a batter made of the flour and 1 pint of water; then allow to come to a boil again, remove from the range, and add the sugar, eggs, a pinch of salt, flavoring extract, evaporated milk, and sufficient water to make 1 gallon. Whip well, and allow to cool before putting in the freezer. One gallon is sufficient for 20 men.

## [Recipe] 408. ICE CREAM (chocolate).

Ingredients used:

3 ounces chocolate grated.

1½ quarts water.

3 ounces flour.

1½ pounds sugar.

2 12-ounce cans evaporated milk.

10 eggs.

Put the grated chocolate in two quarts of water on the range and let come to a boil; add a batter made of the flour and a pint of water; let come to a boil again and remove from the range. Add the eggs and sugar; whip well and add the milk, together with sufficient water to make 1 gallon; allow to cool before putting in the freezer. Sufficient for about 20 men.

## [Recipe] 409. ICE CREAM, Coffee (1 gallon).

Ingredients used:

6 ounces coffee.

1½ pounds sugar.

4 to 10 eggs.

2 12-ounce cans evaporated milk.

3 ounces flour.

Add the coffee to 1 quart of boiling water; then remove from the range, cover well, and allow to stand until cool. Place a quart of water on the range, make a batter, using the flour and 1 pint of water, adding the batter to the quart of water on the range when the latter has reached the boiling point. Let come to a boil, remove from the range, and strain the coffee into the mixture through a clean cloth. Add the eggs, sugar and cream. Whip well and add sufficient water to make 1 gallon. Freeze as ordinary ice cream. Sufficient for about 20 men.

## INDEX

Statement .....	1-7
Excerpts from the pure food law of the statute of Iowa..	4-6
Ice cream standard.....	5
Point in controversy.....	6
Argument .....	7-24
<i>The statute does not deny the plaintiff his property</i> <i>without due process of law in violation of the Four-</i> <i>teenth Amendment</i> .....	7
Consideration of cases of this court governing the question .....	7-11
The state cases.....	11-15
The evil to be corrected.....	15-17
Opinion of Dr. George B. Young of Chicago.....	16-17
List of states having ice cream standards.....	18
Dr. Wiley's opinion.....	18-19
Legislation a practical matter.....	22-24
The true rule.....	23-24
Conclusion	
Writ of Error from the decision of the supreme court of Iowa	
<i>State vs. Hutchinson Ice Cream Company</i> , 168 Iowa, 1...	29-47

## INDEX OF AUTHORITIES CITED

<i>Board of Health of New Jersey vs. Vandruens</i> , 72 Atl. 125..	14
<i>C., B. &amp; Q. vs. McGuire</i> , 219 U. S. 549.....	10
<i>Collins vs. New Hampshire</i> , 171 U. S. 30.....	9
<i>German Alliance Insurance Co. vs. Kansas</i> , 233 U. S. 389..	23-24
<i>Heath &amp; Milligan vs. Worst</i> , 207 U. S. 338.....	23
<i>Lawton vs. Steele</i> , 152 U. S. 133.....	22



# INDEX—Continued

<i>People vs. Bowen</i> , 182 N. Y. 1.....	14
<i>Plumley vs. Massachusetts</i> , 155 U. S. 461.....	7, 8
<i>Powell vs. Pennsylvania</i> , 127 U. S. 678.....	13
<i>Price vs. Illinois</i> , 238 Ill. 446.....	22
<i>Rigbers vs. City of Atlanta</i> , 66 S. E. 991.....	19-20
<i>State vs. Campbell</i> , 64 N. H. 402.....	13
<i>State vs. Crescent Creamery Company</i> , 54 L. R. A. 466; 83 Minn. 284.....	12
<i>State vs. Hutchinson</i> , 168 Iowa, 1.....	9, 17
<i>State vs. Schlenker</i> , 112 Iowa, 642.....	12
<i>State vs. Smyth</i> , 14 R. I. 100 .....	14
<i>State vs. Snow</i> , 81 Iowa, 642.....	11
<i>Schmidinger vs. City of Chicago</i> , 226 U. S., 578.....	9
<i>Schollenberger vs. Pennsylvania</i> , 171 U. S., 1.....	9
<i>Waters-Pierce Oil Co. vs. Deselms</i> , 212 U. S., 173.....	10

# INDEX TO APPENDIX

Prof. Crowley's Formulas.....	25-26
Prof. Baer's Formulas.....	27-28
Formulas set out in the Forecast, January, 1914.....	38-39
Opinion of the Supreme Court, <i>State vs. Hutchinson Ice Cream Company</i> , 168 Iowa, 1.....	29-47



**IN THE  
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1916.

---

NO. 40.

---

THE HUTCHINSON ICE CREAM CO.

AND C. J. HUTCHINSON, MANAGER,

*Plaintiffs in Error.*

VS.

THE STATE OF IOWA.

---

BRIEF FOR DEFENDANT IN ERROR.

---

STATEMENT.

As the record is made up and as the case has been presented in argument by the plaintiff in error, there is but one question to consider, namely: is that part of the pure food law of the statutes of Iowa which fixes the standard for ice cream unconstitutional, in that it offends against the due process clause and the equal protection clause of the Fourteenth Amendment to the federal constitution.

- 4 -

Since the argument of plaintiff in error assumes that the standard for regular or natural ice cream is the same as fruit or nut ice cream, it will be well to set out the statutes of the state covering the question.

Section 4999-a20, Supplement to the Code, 1913, provides in part:

"No person, firm or corporation, by himself, officer, servant or agent, or as the officer, servant, or agent of any other person, firm or corporation, shall manufacture or introduce into the state, or solicit or take orders for delivery, or sell, exchange, deliver or have in his possession with the intent to sell, exchange or expose or offer for sale or exchange, any article of food which is adulterated or misbranded, within the meaning of this act."

Section 4999-a31c provides in part:

"The word 'food,' as herein used, shall include all articles used for food, drink, confectionery or condiment, by man or domestic animals, whether simple, mixed or compound."

Section 4999-a31e, Supplement to the Code provides in part:

"For the purpose of this act an article of food shall be deemed to be adulterated:

"First. If any substance or substances has or have been mixed and packed with it so as to reduce or lower or injuriously affect its quality, strength or purity.

"Second. If any substance or substances has or have been substituted wholly or in part for the article.

"Third. If any valuable constituent of the article has been wholly or in part abstracted.

"Fourth. If it be an imitation of, or offered for sale, under the specific name of another article, or if it does not conform to the standards established by law."

The act then specifies the standard of some twenty-five or thirty food products, some being manufactured, some natural products, and then follows the particular standard fixed for ice cream which reads as follows:

**"ICE CREAM."**

"1. Ice cream is the frozen product made from pure wholesome sweet cream, and sugar, with or without flavoring, and if desired, the addition of not to exceed one per cent (1%) by weight of a harmless thickener, and contains not less than twelve per cent (12%) by weight of milk fat, and the acidity shall not exceed three tenths (3-10) of one per cent (1%).

"2. Fruit ice cream is the frozen product made from pure wholesome sweet cream, sugar, and sound, clean, mature fruits, and, if desired, the addition of not to exceed one per cent (1%) by weight of a harmless thickener, and contains not less than ten per cent (10%) by weight of milk fat.

"3. Nut ice cream is the frozen product made from pure wholesome, sweet cream, sugar, and sound, non-rancid nuts, and, if desired, the addition of not to exceed one per cent (1%) by weight of a harmless thickener, and contains not less than ten per cent (10%) by weight of milk fat."

See Section 4999-a31-c, a31-e, Supplement to the Code, 1913, and section 4999-a31; a31-c; a31-e, Supplemental Supplement, 1915.

### **The Point in Controversy.**

Reduced to its last analysis, the question under consideration is whether or not the state of Iowa can fix some standard, or, if you please, any standard of the amount of butter fat or cream the product must contain.

This is true, because the argument of plaintiff in error does not proceed upon the theory that the particular standard fixed is so arbitrary and unreasonable as to be unconstitutional, but rather does the argument proceed upon the theory that the state has no right to fix any standard whatever.

The state will not follow the method of argument as out-lined by plaintiff in error and treat separately the points of argument consisting of six separate propositions, for the reason that the state does not care to controvert the abstract legal propositions enunciated by counsel. They are perfectly elementary and perfectly understood by every constitutional lawyer. The point in controversy narrows down to the application of legal principles and precedents.

The decision of the supreme court of Iowa sustaining the constitutionality of the act is found in 168 Iowa, 1. See Appendix in the Brief, page.....

### ARGUMENT.

The act having been passed for the purpose of preventing fraud in the sale of a food product, namely: ice cream, it is clearly within the police power of the state, and hence does not deprive plaintiff of his property without due process of law or deny to him the equal protection of the laws under the Fourteenth Amendment.

There is nothing better established in the whole realm of jurisprudence than that the state has plenary power to protect its people from either fraud or unwholesomeness in the sale of food products.

We cannot do better than open this argument by reference to and a quotation from the very well considered case of *Plumley vs. Massachusetts*, 155 U. S., 461, in which it was clearly admitted that oleomargarine was a wholesome food product and an article of commerce, and subject to the protection of the commerce clause and the Fourteenth Amendment; but that a state law of Massachusetts prohibiting its sale if it was artificially colored so as to cause it to look like yellow butter did not offend against the federal constitution.

We think that the application of the principles announced in that case conclusive of the propositions involved in the present controversy. Mr. Justice Harlan who wrote the opinion very aptly said on page 472:

“If there be any subject over which it would seem the states ought to have plenary control, and the power to legislate in respect to which it ought not to be supposed was intended to be surrendered to

(Italics are ours.)



the general government, it is the protection of the people against fraud and deception in the sale of food products. Such legislation may, indeed, indirectly or incidentally affect trade in such products transported from one state to another state. But that circumstance does not show that laws of the character alluded to are inconsistent with the power of congress to regulate commerce among the states."

Indeed, that case was much stronger than the present case, for the reason that it involved interstate commerce, whereas in the present case, the question of interstate commerce is not even remotely affected. This case arises from the sale of ice cream manufactured and sold in the state of Iowa.

Let it be remembered that the oleomargarine case did not involve the question of mislabeling so as to deceive the public. The oleomargarine in question was correctly and legibly labeled oleomargarine, but notwithstanding it was correctly labeled, it was found by the legislature of Massachusetts as a matter of experience that if the product was colored in imitation of butter, many persons would be deceived thereby.

The court on page 468 said:

"The statute seeks to suppress false pretenses and to promote fair dealing in the sale of an article of food. It compels the sale of oleomargarine for what it really is, by preventing its sale for what it is not. *Can it be that the constitution of the United States secures to any one the privilege of manufacturing and selling an article of food in such manner as to induce the mass of people to believe that they*

— 9 —

*are buying something which, in fact, is wholly different from that which is offered for sale? The constitution of the United States does not secure to any one the privilege of defrauding the public."*

The statutes in the oleomargarine cases cited by counsel, *Collins vs. New Hampshire*, 171 U. S. 30, and *Schollenberger vs. Pennsylvania*, 171 U. S., 1 were held unconstitutional because they prohibited the sale of oleomargarine at all, but as pointed out by our supreme court, in referring to the ice cream, "They (the manufacturers) may sell it for what it really is" and that "Possibly it would sell as readily if it is named and sold as frozen skim milk; if not this would be an additional argument for prohibiting the sale of so-called ice cream made from evaporated skim milk as ice cream."

*State vs. Hutchinson*, 168 Iowa 1.

Another case which we think is controlling in the case at bar is *Schmidinger vs. City of Chicago*, 226 U. S., 578. Counsel undertake to explain this case, but their explanation is unsatisfactory. In the *Schmidinger* case, this court sustained the validity of an ordinance of the city of Chicago which prohibited the sale of bread as bread, a perfectly wholesome article and an article for which there was a demand, and sustained the validity of the ordinance of Chicago which prescribed that loaves of bread could not be sold except they were of a particular size. There could be no possible excuse for this ordinance except to protect the people against fraud. It was frankly admitted that the ordinance in question would work a great inconvenience, and especially due to



evaporation after a loaf of bread was baked; that it would necessitate the use of an extra amount of material to cover this evaporation. In response to this, the court said:

“But inconveniences of this kind do not vitiate the exercise of legislative power. The local legislature is presumed to know what will be of the most benefit to the whole body of citizens.” Page 588.

And that:

“This court has had frequent occasion to declare that there is no absolute freedom of contract. The exercise of the police power fixing weights and measures and standard sizes must necessarily limit the freedom of contract which would otherwise exist. Such limitations are constantly imposed upon the right to contract freely, because of restrictions upon that right deemed necessary in the interest of the general welfare.” Pages 589-590.

And cited with approval the case of *Chicago, Burlington & Quincy Railroad Co. vs. McGuire*, 219 U. S., 549, and the cases therein reviewed.

This court held in the case of *Waters-Pierce Oil Co. vs. Deselms*, 212 U. S., 173, that a standard might be fixed which would result in prohibiting the sale of an article not of that particular standard. When it was urged that oils from other localities which were perfectly safe, although they have a specific gravity different from that prescribed by the statute of Oklahoma, and that such oils would be excluded by the standard in question, the now Chief Justice, in writing the opinion in response to this argument, said:

“But we think the court below was clearly right in deciding that, as the subject was within the police power of the state, it was not within the province of the judiciary to disregard the statute and treat it as void upon the theory that the legislature had acted unwisely in fixing the standard which the statute prescribed.”

The decisions of this court are in exact harmony with the decisions of a number of state courts touching the matter under consideration.

The supreme court of Iowa in the case of *State vs. Snow*, 81 Iowa, 642, sustained the constitutionality of an act of the legislature which prohibited the sale of any article intended for use as lard which contained any ingredient but the pure fat of healthy swine, unless it be labeled as “compound lard.” An excerpt from the court’s decision is pertinent to the case at bar. The court on page 646 said:

“If a dealer offers for sale an article intended to be used for lard, he must label it so that the public may not be deceived or defrauded by paying the value of pure lard for a cheaper article. If the dealer will label the article so that the public may know what they purchase, he may deal in it with impunity. This much the law-making power may demand of him without impairing any right of property, or the exercise of any lawful business.”

And our state court, following that decision, has held in substance that if a dealer offers a product as ice cream, it must actually contain a substantial amount of cream or milk fat, or else it must be so labeled and described

that the public may not be deceived or defrauded by paying the value of real ice cream and obtaining a cheaper article, but that if the dealer will label the article so that the public may know what they purchase, he may deal in it with impunity.

The supreme court of Iowa in the case of *State vs. Schlenker*, 112 Iowa, 642, sustained the constitutionality of our pure food law in relation to the sale of milk, and it was therein held that "It is not enough to say that defendant did not intend to defraud, or that the milk he sold was wholesome. \* \* \* It is enough that adulteration such as prescribed by the statute *may* defraud or prove deleterious to the public health or comfort."

In the case of *State vs. Crescent Creamery Company*, 54 L. R. A. 466, the supreme court of Minnesota sustained the validity of a statute requiring cream to contain 20% of fat, and this, although there was no adulteration of the article; in other words, if the cream contained less than twenty per cent of fat, it could not be sold as cream. The reasoning of the court in that case is in exact harmony with the reasoning of the supreme court of Iowa in sustaining the validity of the statute now in question. The statute of Minnesota read:

"No person shall sell, or offer for sale, any cream taken from impure or diseased milk, or *cream that contains less than twenty per cent of fat.*"

Precisely the same objection to the statute and the same line of argument was made as is now being made in the case at bar, but the court held that the statute was a

part of the general statutes of the state enacted to prevent deception in the sale of dairy products, and its obvious purpose is to fix a standard for cream, *and forbids the sale of any cream, as such, which is below the prescribed standard*; in other words, the court held that cream could not be sold *as cream* unless it contained twenty per cent of fat. In reply to the argument of counsel that it was commonly known that there was no practice of adulterating cream as there was in the case of milk, nor of simulating it as in the case of butter, and that pure cream is wholesome, though it contains less than twenty per cent of fat, the court said:

“Undoubtedly there is less necessity for a statute to prevent deception in the sale of cream than there is of one to prevent fraud in the sale of milk, because the latter may be classed as a necessity, and the former as a luxury, and its sale not as general as that of milk.”

But said the court:

“The distinction is one of degree, not of principle. In either case the legislature is the sole judge of the necessity and propriety of preventing deception in the sale of the article, by appropriate legislation.”

And citing the case of *Powell vs. Pennsylvania*, 127 U. S. 678.

The supreme court of New Hampshire in the case of *State vs. Campbell*, 64 N. H., 402, sustained the constitutionality of an act of the legislature which prescribed the

per cent of milk solids and the per cent of watery fluid which all milk must contain and sustained the decision of the lower court in holding that:

“Evidence that pure milk frequently does not come up to the standard fixed by the legislature is not admissible for the defendant, on the trial of an indictment under the statute for selling adulterated milk.”

To the same effect see the case of *State vs. Smyth*, 14 R. I., 100, in which it is held:

“It is equally a fraud on the buyer, whether the milk which he buys was originally good and has been deteriorated by the addition of water, or whether in its natural state it is so poor that it contains the same proportion of water as that which has been adulterated.”

To the same effect see the case of *Board of Health of New Jersey vs. Vandruens*, 72 Atl. 125.

In the case of *People vs. Bowen*, 182 N. Y., 1, the court made an observation especially applicable to the case under consideration. It was there said that the court had not gone so far as to prohibit the sale of milk that was wholesome even if up to the standard, “provided it is sold for what it actually is and not as pure milk.” But the court added:

“If offered for sale as milk simply, the presumption is that it is offered as pure milk, and when so offered, without making it known in any way that it is not pure, the legislature may inflict a penalty and make the same a crime, unless the milk has such positive and negative qualities as in its judgment pure milk should have.”



Counsel labor extensively to show that a man has no right to expect any particular thing when he calls for ice cream and pays for it. Counsel become quite scholastic in their endeavor to show that he might obtain frozen custard, frozen skim milk, or a variety of things.

Under Point 3, page 16, of their brief it is claimed that ice cream is a generic term, embracing a large number and variety of products; that it is not an imitation or a substitute.

Under Point 4, it is claimed that the act as construed by the supreme court of the state of Iowa is a prohibition of the sale of an admittedly wholesome article of food under its own name, and that it enacts an arbitrary standard.

We see no reason to enter into a learned discussion as to "What is ice cream?" Every legitimate argument made by counsel has been disposed of in the cases decided by this court or state courts of respectability.

These courts have held that cream may not be sold as cream and milk may not be sold as milk even though absolutely free from adulteration, even though it is concededly wholesome and sanitary, unless the cream has a given content of butter fat and the milk has a given content of milk fat.

This court has sustained the constitutionality of a city ordinance and a state law holding that bread may not be sold as bread even though entirely wholesome, unless sold in accordance with a certain standard; and this

court has sustained the validity of a state law that oleomargarine may not be sold as oleomargarine if it happens to be so artificially colored as to look like butter, notwithstanding it is labeled oleomargarine.

The point decided by these decisions is not whether a thing is sold in its own name, or is an imitation, or whether it is wholesome. It is sufficient to satisfy all constitutional requirements that the statute in question tends to prevent fraud. The purchaser cannot possibly tell what he is purchasing by merely looking at the article, and in the days of the telephone and delivery service, in most instances he does not see the article until after it is delivered. There is wonderful opportunity for fraud in the case of the manufacture and sale of ice cream.

It will not do for counsel to refer to the formula as set out in the decision of our supreme court as an absolute fake. We admit that it is a fake, and what we seek to do by the Iowa statute is to prevent the use of just such fakes or frauds as this. Destructive competition and the love of gain furnish the inducement to engage in all sorts of fraudulent practices.

How is the honest manufacturer going to compete with the manufacturer of ice cream who uses powdered milk, condensed milk and what is still worse, by the use of the homogenizer he may use stale butter, stale butterine or oleomargarine.

About the time these cases were argued in the court below in the state of Iowa, there appeared in the Chica-



go Record-Herald an article quoting extensively from Dr. George B. Young, then commissioner of Chicago, in which he called attention to the fact that by the use of this rather modern invention known as the homogenizer, a product resembling cream may be made from butter, new or old, butterine, oleomargarine, and the Doctor stated in this article that ice cream was being made from this artificial cream and sold to the restaurants in Chicago and by them to their patrons as real ice cream.

By the use of the homogenizer animal fats may be used as a substitute for cream, and it is well known that saccharine may be used as a substitute for sugar.

Without again setting out the formulas as given in the Forecast of the January issue of 1914, I direct the attention of this court to these formulas copied in the decision of our own court. See the Appendix, pages 38-39. See also *State vs. Hutchinson*, 168 Iowa, 15, 16.

I also call the court's attention to the formula which was used by Prof. Crowley then connected with the Dairy and Food Department of the state of Iowa, formerly a professor in the State Agricultural College of Iowa at Ames, and now occupying the same position with the State Agricultural College of Iowa. This formula was used in manufacturing ice cream for the purpose of an exhibit to the supreme court of Iowa when the case was submitted to that court. Appendix, pages 25-26.

We also include in the Appendix, pages 27-28, a few formulas as given by Prof. Baer of the Agricultural Experi-

ment Station of the University of Wisconsin in the February, 1916, Bulletin, entitled "Ice Cream Making," and numbered Bulletin 262.

We quote from page 34 of the Bulletin: "The formulas given are for ten gallons of finished ice cream." This Bulletin by the Agricultural extension of the University of Wisconsin not only shows the possibilities of fraud, but the frequent use of the homogenizer and the use of condensed milk and powdered milk.

Iowa is not alone in recognizing the necessity of fixing a standard in the sale of ice cream in order to prevent fraud. In Colorado, Georgia, Idaho, Kansas, Kentucky, Missouri, Montana, Nebraska, New Hampshire, Nevada, North Carolina, North Dakota, Oklahoma, South Dakota, Utah, Wisconsin and Wyoming, the standard fixed for ice cream to be sold in each of those states must contain fourteen per cent of butter fat.

The states of California, Florida, Michigan, Minnesota and Oregon have fixed the standard for ice cream at twelve per cent butter fat the same as Iowa. But five states which have legislated have a lower standard than Iowa. See Bureau of Animal Industry, Circular No. 218.

Prof. Wiley when he was connected with the Department of Agriculture, fixed the standard of ice cream at fourteen per cent of butter fat. Circular 19, United States Department of Agriculture, page 7. It is true that he had no authority from Congress, and therefore there was no way by which the laws could be enforced.

This is the basis for the failure in the two federal decisions referred to by counsel for plaintiff in error, but it at least indicates what Dr. Wiley thought to be a reasonable per cent.

Twenty-nine states have fixed a higher standard in the sale of cream than in Iowa; four of these states, including the District of Columbia, fix the standard at twenty per cent. Twenty-five states fix the standard at eighteen per cent. Only two states fix a lower standard than that of Iowa. Circular 218, Bureau of Animal Industry.

Counsel have placed an unwarranted construction upon the case of *Rigbers vs. City of Atlanta*, 66 S. E. 991, in which the court of appeals of Georgia held invalid the ordinance of Atlanta, which in effect absolutely prohibited the sale of ice cream, unless it contained twelve per cent butter fat. The case however does not determine the scope of the police power of a state. It is authority only against the passage of a city ordinance in the absence of express authority so to do. The first statement made by Powell, Justice, was that "No express power has been granted to the city of Atlanta to pass the ordinance in question." And again the court said:

"It may be a serious question as to whether the provisions of the pure food law of this state are not broad enough to take away from municipalities the right to prescribe standards of foodstuffs."

And later on the court conceded the principle contended for by the state in this case, in this language:

"Even if the city has the power to prescribe that no ice cream of less than a certain percentage of richness in butter fats shall be sold as standard ice cream, it still would not have the power to say that ice cream below that standard should not be sold at all. *For instance, it might be permissible to say that the term 'ice cream,' or 'standard ice cream,' or 'first class ice cream,' should relate only to ice cream of a certain prescribed richness, and that whoever sold ice cream of poorer quality should, either by calling it under some other name, or by indicating on the vessel in which it is delivered, or otherwise, disclose the inferiority of its quality.*"

And concluded the decision as follows:

"But to say that, in a city the size of Atlanta, no one shall under any circumstances, or for any purpose, sell any ice cream containing less than ten per cent butter fats is so unreasonable that the ordinance cannot be upheld, *where the city's power to pass it rests solely upon the general welfare clause of its charter.*"

It is impossible to follow counsel in their line of reasoning. It is too involved and complicated; it is ingenious but not persuasive or convincing.

It is not true as urged by counsel under Point 5 that no evil existed before the passage of the Iowa statute, or that the evil sought to be corrected was the evil created by the statute itself; in fact, if all that counsel say is true concerning the loose definition of ice cream, it is a very strong reason why such a statute should be passed. It was time that the different states of the

Union should fix some standard so that when a person bought ice cream, he would have some means of knowing what he would secure. Formerly we never knew what we bought when we called for maple syrup and paid for maple syrup, but now, thanks to the pure food laws, state and national, we know what we are buying.

When a man purchases ice cream, he may not have in mind any given butter fat content, but he has a reason to expect that he is not going to receive something which was made out of stale butter, butterine, oleomargarine, powdered milk, condensed milk, saccharine and copious proportions of water and gelatine. He has a right to expect that it will be made from wholesome sweet milk with a substantial per cent of cream, the exact standard, so long as it is not unreasonable, being entirely for the legislature. Hence, fraud did exist in the manufacture and the sale of ice cream prior to the passage of the statute. It was because of the fraud existing which induced the legislature to pass the statute.

As a matter of fact, today the legitimate manufacturer, who is manufacturing a good grade of ice cream, wants just such a statute as we have in order to protect himself against the manufacturer who is willing to resort to these unquestionable methods and use questionable ingredients in manufacturing ice cream.

Hence the legislature has said that if a product is to be sold as *ice cream*, it must contain not less than twelve per cent by weight of milk fat, but it leaves all sorts of combinations in the use of a harmless thickener or filler.



Counsel quote with approval from the opinion of Judge McHenry of the lower district court of Iowa, and present a line of argument that is indulged in by counsel generally in seeking to overthrow a statute, and claim that if the legislature can prescribe the standard in question, then a far different standard might be prescribed. The result of the argument amounts to this: that the statute must be stricken down as unconstitutional for the reason that if the court holds that the legislature may prescribe a *reasonable* standard, they will thereby be compelled to hold that the legislature may prescribe an *unreasonable* standard. No line of argument is more frequently indulged in which is possessed of less merit.

The answer to this argument is found by this court, speaking through Mr. Justice Hughes, in the case of *Price vs. Illinois*, 238 U. S. 446, wherein the court said:

“The legislature is entitled to estimate degrees of evil and to adjust its legislation according to the exigency found to exist.

And that when an “unconstitutional discrimination against the plaintiff in error” is claimed, “the question is whether the classification made by the legislature can be said to be without any reasonable basis.”

In the case of *Lawton vs. Steele*, 152 U. S. 133, this court held that in correcting evils, the legislature was entitled to “a large liberty of choice in the means employed,” and in this “liberty of choice” unless this prohibition is palpably unreasonable and arbitrary, “we

are not at liberty to say that it passes beyond the limits of the states protective authority."

In the case of *Heath & Milligan Co. vs. Worst*, 207 U. S. 338, it is said:

"A classification may not be merely arbitrary, but necessarily there must be great freedom of discretion, even though it result in 'ill-advised, unequal and oppressive legislation.' *Mobile Company vs. Kimball*, 102 U. S. 691. And this necessarily on account of the complex problems which are presented to government. Evils must be met as they arise and according to the manner in which they arise. The right remedy may not always be apparent. Any interference, indeed, may be asserted to be evil, may result in evil. At any rate, exact wisdom and nice adaptation of remedies are not required by the Fourteenth Amendment, nor the crudeness nor the impolicy nor even the injustice of state laws redressed by it."

The true rule is stated in the case of *German Alliance Insurance Co. vs. Kansas*, 233 U. S. 389, in which the court quotes with approval:

"The scope of judicial inquiry in deciding the question of *power* is not to be confused with the scope of legislative considerations in dealing with the matter of *policy*. Whether the enactment is wise or unwise, whether it is based on sound economic theory, whether it is the best means to achieve the desired result, whether, in short, the legislative discretion within its prescribed limits should be exercised in a particular manner, are matters for the judgment of the legislature, and the earnest con-



flict of serious opinion does not suffice to bring them within the range of judicial cognizance."

And in that case on page 411, the court says, referring to the cases cited:

"They demonstrate that a business, by circumstances and its nature, may rise from private to be of public concern and be subject, in consequence, to governmental regulation."

And quote with approval that:

"The underlying principle is that business of certain kinds holds such a peculiar relation to the public interests that there is superinduced upon it the right of public regulation."

And proceed to state that:

"It would be a bold thing to say that the principle is fixed, inelastic, in the precedents of the past and cannot be applied though modern economic conditions may make necessary or beneficial its application. In other words, to say that government possessed at one time a greater power to recognize the public interest in a business and its regulation to promote the general welfare than government possesses today."

On reason and on authority, the decision of the supreme court of Iowa should be affirmed.

Respectfully submitted,

GEORGE COSSON,  
*Attorney General of Iowa,*  
*Counsel for Defendant in error.*

## APPENDIX.

I, P. W. Crowley, on oath declare that I am a resident of Des Moines, Polk county, Iowa. That I am at present a member of the staff of the State Dairy and Food Commissioner as expert and instructor in ice cream work and that prior to taking up my present work, I occupied the position of instructor in ice cream making at the Iowa State College of Agriculture. That on Tuesday, April 7, 1914, I manufactured ice cream, using four different formulas as given herein and the cost of materials used in each formula is a true and reasonable cost for such materials and that the statement of cost per gallon for these materials and approximate percentage of butter fat in each case is correct to the best of my knowledge and belief.

### Formula I.

7.75 lbs. of 34% cream at 35c per lb. butter fat..	\$ .92
1.85 lbs. of milk at 6¼c per quart.....	.0577
2.6 lbs. of condensed milk at 60c per gallon....	.17
2.7 lbs. sugar at 5c per lb.....	.135
1.2 oz. vanilla at \$8.00 per gallon.....	.075

---

Cost of three gallons.....\$1.357

Cost per gallon......452

Approximate percentage of butter fat, 20%.

### Formula II.

2.1 lbs. of 34% cream at 35c per lb. butter fat.\$	.25
7.8 lbs. of milk at 6¼c per quart.....	.24
2.25 lbs. sugar at 5c per lb.....	.1125

1.2 oz. gelatine at 35c per lb.....	.026
1.2 oz. vanilla at \$8.00 per gallon.....	.075
2.64 lbs. condensed milk at 60c per gallon.....	.175
<hr/>	
Cost of three gallons.....	\$ .8785
Cost per gallon.....	.2928
Approximate percentage of butter fat, 7.7%.	

### Formula III.

2.1 lbs. condensed milk at 60c per gallon.....	\$ .1398
2 lbs. milk at 6 $\frac{1}{4}$ c per quart.....	.0625
6 lbs. water .....	.0000
1.38 lbs. sugar at 5c per lb.....	.069
1.2 oz. gelatine at 35c per lb.....	.026
1.5 oz. vanilla at \$8.00 per gallon.....	.093
<hr/>	
Cost of two and one-half gallons.....	\$ .389
Cost per gallon.....	.155
Approximate percentage of butter fat, 1.9%.	

### Formula IV.

13.2 lbs. artificial cream 18%, 2.37 lbs. at 23.5c..	\$ .558
2.4 lbs. sugar at 5c per lb.....	.120
1.2 oz. vanilla at \$8.00 per gallon.....	.075
1.2 oz. gelatine at 35c per lb.....	.026
<hr/>	
Cost of three gallons.....	\$ .779
Cost per gallon.....	.259
Approximate percentage of butter fat, 15%.	

Had artificial cream composed of oleomargarine and milk been used in the various formulas instead of natural

sweet cream, the saving effected would have reduced the cost per gallon as follows: Formula No. I, ten cents; Formula No. II, three cents.

P. W. CROWLEY.

State of Iowa, Polk County, ss.

Subscribed and sworn to before me by said P. W. Crowley, this 9th day of April, A. D. 1914.

HARRY W. DAHL,

Notary Public.

### A FEW SIMPLE FORMULAS.

In the commercial manufacture of ice cream no definite formulas are followed. Although many combinations have been tested with good results, no attempt had been made at the Wisconsin Experiment Station to work out any ideal formula for ice cream. The formulas given are for 10 gallons of finished ice cream.

- I. 5½ gallons 18 per cent cream (pasteurized).  
8 pounds sugar.  
2 ounces gelatine.  
4 ounces vanilla extract.
- II. 4½ gallons 18 per cent cream (pasteurized).  
1 gallon condensed milk.  
8 pounds sugar.  
2 ounces ice cream powder.  
4 ounces vanilla extract.
- III. 5½ gallons homogenized 16.5 per cent cream.  
8 pounds sugar.  
2 ounces gelatine.  
4 ounces vanilla extract.

IV. 40 pounds 22 per cent cream (homogenized).

4 pounds condensed milk.

8 pounds sugar.

4 ounces vanilla extract.

V. 44 pounds 20 per cent cream.

8 pounds sugar.

2 ounces cream powder or  $\frac{1}{2}$  ounce gum tragacanth.

4 ounces vanilla extract.

Formula IV, which contains no filler, will make an excellent quality of ice cream which, provided it is well packed, will remain in good condition for a week.

All the above formulas may be modified to reduce or increase the fat content of the ice cream. The lower the fat content of the cream, the more filler must be added to produce a smooth ice cream.

The sugar, filler, and flavor added to the cream will increase its volume about 10 per cent and will usually reduce the fat content  $2\frac{1}{2}$  per cent. An 18 per cent cream used as a basis in making up a "mix" will produce an ice cream testing  $15\frac{1}{2}$  per cent.

Bulletin 262, February, 1916, Agricultural Experiment Station of the University of Wisconsin.



SUPREME COURT  
OF THE  
STATE OF IOWA.

AT

DES MOINES.

SEPTEMBER, 1914, AND JANUARY, 1915, TERMS.

STATE OF IOWA, *Appellant*,

v.

HUTCHINSON ICE CREAM COMPANY, ET AL., *Appellees*.

Preston, J. 2. The principal point in the case is whether the act in question, fixing a standard for ice cream, is within the police power of the state. The contention of defendants, as they state it, is substantially that the act is not within the police powers of the state, for that it in fact has no relation to the comfort, health and welfare of the public, and hence violates both the state and federal constitutions by interfering with the personal liberty and private property of the citizen, without due process of law; that it is arbitrary, unreasonable and an unwarranted interference with a lawful business, depriving manufacturers of ice cream of property rights of great value, and depriving both manufacturers of ice cream and the people of their liberty.

The contention of the state is, in substance, that the act is clearly within the police power of the state, and hence does not offend against the federal or state con-

stitution, unless it has no reasonable relation to the purposes which it is designed to effect. It is conceded by the state that, to be a valid exercise of such power, the act must have relation to the comfort, safety or welfare of the public; but that the welfare of the public involves or includes the right of the legislature to protect the public from fraud and deception; that the constitution does not secure to anyone the privilege of defrauding the public; that it is impossible for consumers of ice cream to determine by any ordinary diligence the ingredients of the product; and that, without a standard, opportunity is afforded unscrupulous manufacturers of ice cream to palm off upon the public a much cheaper and inferior article for a higher quality at the price of the better and more costly product.

There seems to be no serious controversy between counsel for either side in regard to many of the fundamental propositions of law involved, but they agree that the difficulty lies in their application. Defendants concede the validity of the police power in its fullest extent; admit that it is within the power of the legislature to enact laws for the purpose of preventing fraud in the sale of food products; that ordinarily the propriety of passing an act of this character is a question for the determination of the legislature; that there are many restraints to which every person is necessarily subject for the common good; and that laws enacted under the police power to promote such purpose may be sustained, although they interfere, to some extent, with the liberty of the citizen and the freedom of contract. On the other hand, it is conceded by the state



that such laws, to be valid, and within the police power, must not be arbitrary or capricious, but reasonable and have a reasonable relation to the object to be accomplished.

Such concessions render it unnecessary for us to discuss at length some of the points, or to review the many cases cited. It is said by counsel for appellees that the only debatable ground in the case is whether this statute comes within the police power as a measure tending to prevent the liability to fraud and deception; that this is the real question. The wisdom or expediency of such a measure is not for the determination of the court.

The presumptions are in favor of the exercise of the power in the enactment. We are to overthrow the act, if at all, only when it violates the constitution "clearly, palpably, plainly and in such manner as to leave no reasonable doubt." The question is whether there is any reasonable ground upon which the legislature, acting within its conceded powers, could pass such a law as that now in question. The courts have not attempted to accurately define the limit of the police power, nor is it advisable to do so, because of changing conditions. The power is broad, but subordinate to the constitution. The courts may and will interfere in a proper case where the legislature has clearly exceeded the constitutional limitations. It is not enough that the case is a doubtful one. Though we might be of the opinion that an 8 per cent or some other standard should have been established, still we ought not to interfere with the

standard fixed by the legislature, unless such standard is clearly arbitrary and unreasonable. We shall not take the space to give definitions of police power. The question is discussed at length in the following, among others, of our own cases: *McGuire v. Railway*, 131 Iowa, 340, 354; *State v. Schlenker*, 112 Iowa, 642; *State v. Packing Co.*, 124 Iowa, 323.

It is not claimed by either side, as we understand it, that the act in question is a health law. The claim of the state is that the purpose of the legislature was to prevent the perpetration of fraud upon the public. The public welfare embraces a variety of interests calling for public care and control. These are: "The primary social interests of safety, order and morals; economic interests; and non-material and political interests." Freund *Police Power*, Secs. 9, 15.

The claim here is that the act fixing a standard for ice cream deals with economic interests, the purpose being, as already stated, to prevent fraud. It was said in one of the milk cases, *State v. Schlenker*, 112 Iowa, 642: "It is not enough to show that defendant did not intend to defraud, or that the milk be sold was wholesome . . . It is enough that adulteration such as prescribed by the statute may defraud, or prove deleterious to the public health or comfort. The legislature may well determine that the adulteration of milk tends to facilitate vicious practices and that it ought to be prohibited."

Laws tending to prevent fraud and to require honest weights and measures in the transaction of business

have been frequently sustained in the courts. *McLean v. Arkansas*, 211 U. S., 539, 550.

The constitution does not secure to anyone the privilege of defrauding the public. *Plumley v. Mass.*, 155 U. S., 461, 479.

As bearing upon the question as to whether this statute, fixing a certain standard for ice cream, is so manifestly arbitrary and unreasonable as that the legislature was not justified, under the police power, in enacting it, and whether fraud might have been practiced upon the public in the sale of ice cream, we should here refer to conditions and some of the facts which we ought to presume were known to the legislature when the statute was enacted. We say this because some of the facts and conditions called to our attention existed and were of more or less notoriety at the time of the passage of this law. We are asked to consider these facts and conditions for the purpose of determining whether the act is so manifestly arbitrary and unreasonable as to require us to hold it invalid. If, under any possible state of facts, the act would be constitutional and valid, the court is bound to presume that such conditions existed; whether a state of facts existed which called for the enactment of this legislation was for the determination of the legislature. *McGuire v. Railway, supra*.

An authority is cited to the effect that when a question of fact is debated or debatable, and the extent to which a constitutional limitation goes is affected by the truth in respect to that fact, the court will take judicial cognizance of all matters of general knowledge, and will

consider expressions of opinion from other than judicial sources given by those qualified by their skill and experience to express such opinions. *Muller v. Oregon*, 208 U. S., 412.

Just how far we should go in regard to such matters, where, as in this case, the decision was on demurrer, we need not determine, for the reason that we are asked by both sides, without objection from either, to consider depositions taken for use, had the case been tried on the merits, reports, trade journals, cookbooks containing a great many formulas for making ice cream, circulars, and the like. These have been abstracted and certified. We shall not attempt to set out all these matters, but enough to illustrate in a general way the points made.

It appears that in seventeen states the standard fixed for ice cream to be sold is 14 per cent; five states have fixed the standard at 12 per cent butter fat, the same as our own; but five states which have legislated have a lower standard than Iowa. The federal government fixes the standard for ice cream at 14 per cent. It should be said as to the 14 per cent standard fixed by the federal government that it is not claimed that such standard has been fixed by law, but by the United States Department of Agriculture. But, even though not law, it would be a circumstance proper to be considered as the opinion of that department. The legislature would not be bound entirely by the conflicting opinion of any of the persons we shall refer to. From these documents, it appears that there is a difference of opinion as to the advisability of establishing a standard for ice cream, or if it is estab-

lished, the per cent of butter fat the product should contain. Some think a high standard of butter fat is injurious to health, especially for children and invalids; others object to high butter fat contents during the summer months, on account of the shortage in the supply. It is contended by some that ice cream should be made from cream, sugar and flavor solely. An article in a trade journal says:

"Commissioners have agitated a high butter fat standard and we have the significant controverting fact that nowhere is there a great ice cream business built up on a high butter fat formula. The ice cream manufacturers know what the public wants. It does not want an over rich product because it cannot eat enough of it."

The same article states:

"The moral support of the dairyman, the creamery men and the cheese manufacturer and the milk dealer in these matters will help greatly. They have only to remember that when the ice cream man cuts his butter fat content, he adds condensed and that one is about as valuable as the other, if anything condensed is more valuable because it allows the use of all the milk."

Large manufacturers of ice cream from different parts of the country gave testimony and gave their opinions from their standpoint. They state that they would not attempt to define ice cream, because it covers a large number of frozen substances; that there is an unlimited number of formulas; cream should be a part of the mix, the same as sugar or flavor. When condensed milk is



used, the purpose is to add solids, thereby giving the cream better body; the purpose of the cream is to add to the flavor and to add to the body; the largest dealers in the United States are not so-called high butter fat men; butter fat is not the best solid to provide body for ice cream; there are manufacturers who make a high butter fat ice cream and cater only to exclusive trade and get a long price for it. One witness says:

“Speaking in a commercial sense, I do not believe raising the standard to 12 per cent would materially affect the price of the ice cream. It would diminish the amount of other solids which would be put in it; the milk producer’s skim milk would go to waste. The use of condensed milk has very much increased during the last few years because of the increased demand for ice cream and the extensive use of milk solids in ice cream. Millions of gallons of skim milk used to be thrown away which is now converted into condensed milk and there is a ready market for it. My experience is that the public prefers 8 per cent ice cream to 12 per cent. The 8 per cent standard was arrived at in Illinois by a commission which investigated the matter and arrived at the standard at 8 per cent. I do not think there should be any standard at all.”

Other witnesses gave similar testimony. One manufacturer of many years’ experience says that years ago ice cream would test so low in butter fat that you would not know how to find it; that it was then made out of milk, eggs, and corn starch, but that later, “We enlarged the butter fat in it.” He says that the man who makes high butter fat ice cream will have to demand more

money for it; that normal butter fat ice cream runs from 6 per cent to 10 per cent; that the per cent of butter fat has no relation to its wholesomeness.

Defendants show that consumers would eat a less quantity of ice cream which is rich in butter fat. This would decrease the consumption by the public, and the output and profits of the manufacturers. This would not, perhaps, be a reason for fixing a standard, but may bear on the motive of those who oppose it and affect their claims as to whether the standard is unreasonable. As stated, there are many formulas for making ice cream. Here is one: "Vanilla Ice Cream Without Cream or Milk. One vanilla bean, 8 gills of syrup at 20 degrees, 18 egg yolks. (To be cooked and frozen.) Then work in a meringue made of 2 egg whites and  $\frac{1}{4}$  lb. of sugar."

It is shown that the cost to manufacture ice cream containing 20 per cent butter fat is 45 cents per gallon; containing 7.7 per cent, 29 cents; and that where condensed milk is used and the product contains 1.9 per cent butter fat, the cost is 15 cents per gallon.

We have set out these matters somewhat in detail for the purpose of showing that the consumer may be defrauded, and as showing the propriety or necessity for fixing a standard, or rather to show that the legislature might properly so determine. We quote at some length from one of the documents submitted:

"Ice cream is one of the delights of the food adulterator for ice cream is a mixture of various things in which each one more or less loses its identity. The adulterator is able therefore to inject all manner of



inferior and often dangerous cheapeners into his product and to compete successfully with the honest manufacturer who makes clean, wholesome ice cream.

"The honest ice cream maker today is working at a decided disadvantage when he is obliged to compete with the dishonest one, since the dishonest one need not label his product so that the ingredients will be shown to the consumer or even to the retailer. This fact was strikingly shown at a recent meeting of ice cream manufacturers in New York, at which one man present declared that it was impossible for a competitive ice cream maker to be honest. This man asserted, and with much reason, that there were three things that made manufacturers dishonest. These three things were the federal government and the state and municipal departments of health, all of which encourage the dishonest manufacturer at the expense of the honest one. As a basis for his argument this man presented three formulas for making commercial ice cream which speak for themselves. Here they are:

"Formula No. 1.

"Sells to retailer at \$1.25 per gallon.

11 quarts 40% of cream at 45c.....	\$ 4.95
5 quarts grade B milk at 6½c.....	.33
4 quarts condensed milk at 20c.....	.80
9 pounds sugar .....	.45
4 ounces extract .....	.40
	<hr/>
	\$ 6.93

"When expanded by freezing this quantity of ingredients produces forty quarts of ice cream, con-

taining 20% butter fat at a cost of less than 80c per gallon.

“Formula No. 2.

“Sells to retailer at 90c per gallon.

3 quarts 40% cream at 45c.....	\$ 1.35
13 quarts grade B milk at 6½c.....	.85
4 quarts condensed milk at 20c.....	.80
4 ounces gelatine at 24c per lb.....	.06
4 ounces extract .....	.40
7½ pounds sugar.....	.38
	<hr/>
	\$ 3.84

“These ingredients expanded by freezing yield forty quarts of ice cream containing 7½% butter fat at a cost of 38c a gallon.

“Formula No. 3.

10 gallons of condensed milk.....	\$ 8.00
10 gallons grade B milk.....	2.60
60 gallons plain water.....	0.00
4 pounds gelatine at 20c.....	.80
Color .....	.01
Flavor .....	1.00
60 pounds sugar at 5c.....	3.00
	<hr/>
	\$15.41

“These ingredients expanded by freezing yield 120 gallons of ‘ice cream’ at a cost of 13 cents a gallon.

“What the ice cream makers, and consumers as well, need is the creation of ice cream standards and

laws which would compel the manufacturers who make 'cheap' ice cream to correctly label their product. A law is needed in New York and other places which will state how much butter fat must be contained in ice cream before it can be called ice cream and which will prevent the use of gelatine reeking with millions of bacteria and of coal tar dyes, unless these ingredients are labeled.

"Ice cream is a commercially manufactured commodity, and as such should be adequately regulated by the health authorities, both for the benefit of the honest manufacturers and the innocent consumers."

Notwithstanding these conflicting opinions, it was a question for the legislature to say whether this legislation was called for. The legislature was not compelled to take the view of either those who favor or oppose a standard. Taking one view of it, conditions were such as to clearly sustain the action of the legislature. We are not entirely satisfied that this would not be so if conditions were as claimed by the defendants. We are not to say, and do not, of course, determine that these defendants, or the association appearing in argument, or any particular person is or has been guilty of any fraud or deception. The question is whether, without a standard, dishonest or unscrupulous manufacturers may do so. It is not practicable by any ordinary inspection for the purchaser to distinguish cheaper, low-grade ice cream from the better quality. Because of this, it is apparent from the matters which we have detailed that an opportunity is afforded for deception by selling an inferior quality of ice cream at the price of a better or more expensive grade. This was the case in the sale of oleomargarine. *State vs.*

*Packing Co.*, 124 Iowa, 323. In this respect, it differs from the case of *Frost vs. Chicago*, 178 Ill., 250, where it was held that a person who is ordinarily careful and intelligent could not be deceived by a netting covering for baskets of fruit. In such case, the purchaser could still see and know what he was buying.

The purpose of the act in question was to prevent just such deception and fraud as would be possible without a standard, and it seems to us it cannot be seriously claimed that the statute will not accomplish the end sought.

It is said by defendants that they are deprived of the right to sell their product if it contains a less per cent of butter fat than that prescribed by the statute and that the sale of such is entirely prohibited. This, we think, is an assumption not warranted. They may sell it for what it really is. Possibly it would sell as readily if it is named and sold as frozen skim milk; if not, this would be an additional argument for prohibiting the sale of so-called ice cream made from evaporated skim milk as ice cream.

The state contends that every point in this case is decided against the contentions of defendants in *State vs. Schlenker*, *supra*, and *State vs. Snow*, 81 Iowa, 642. They are very closely in point.

The only case called to our attention in which the question of fixing a standard for ice cream was decided is *Rigbers vs. City of Atlanta*, 66 S. E., 991. In that case, under an ordinance, the prohibition was not against

selling ice cream of less than the prescribed percentage, as ice cream, but against selling it at all. The provision of the ordinance is: "Ice cream sold or kept for sale must contain at least 10% butter fats, for fruit ice cream, and 12% for plain ice cream." Under this ordinance, ice cream could not be sold or kept for sale unless it contained the required per cent of butter fat. As already stated our statute does not prohibit the sale of such product. In the Georgia case, the court said: "It might be permissible to say that the term 'ice cream' \* \* \* should relate only to ice cream of a certain prescribed richness, and that whoever sold ice cream of poorer quality should either by calling it under some other name or by indicating on the vessel in which it is delivered, or otherwise, disclose the inferiority of its quality"—thus recognizing the distinction which we make between that ordinance and our statute, and holding that the sale of ice cream may be regulated by fixing a standard. Our statute fixes a standard for ice cream and prohibits the sale of anything else as ice cream, but the sale of a product formerly known as ice cream, but containing a lower per cent of fat than that prescribed by the statute, is not prohibited. It may be sold for what it is. It may be sold under some other name and the consumer will not be deceived, for he now knows that when he buys ice cream he is getting an article containing a certain per cent of butter fat, and that this may not be so if he buys something not as ice cream, but as something else.

Defendants say their case comes within the doctrine of *People vs. Marx*, 99 N. Y., 377. This must be on the erroneous assumption that the Iowa statute prohibits

absolutely the sale of their product if it contains less than the specified per cent of fat. The New York statute referred to in the *Marx Case* did prohibit the sale of oleomargarine, which was shown to be a wholesome article and not injurious, and the statute was held invalid. That statute was amended so as to regulate the sale and held valid in *People vs. Arensberg*, 105 N. Y., 123, 128, 11 N. E., 277. As amended, the statute was entitled: "An act to prevent deception in the sale of dairy products," etc. It prohibited: (1) the manufacture out of any animal fat, or animal or vegetable oils not produced from unadulterated milk, or cream from the same, of any product in imitation or semblance or designed to take the place of any natural butter produced from milk, etc.; (2) mixing, compounding with, or adding to milk, cream or butter, any acids or other deleterious substances, or animal fats, etc., with design or intent to produce any article in imitation or semblance of natural butter; (3) selling, or keeping, or offering for sale, any article manufactured in violation of the provisions of the section.

The defendant was convicted of selling the article manufactured in violation of the provisions of the act. The court said:

"Assuming, as is claimed, that butter made from animal fat or oil is as wholesome, nutritious and suitable for food as dairy butter; that it is composed of the same elements and is substantially the same article, except as regards its origin; and that it is cheaper; and that it would be a violation of the constitutional rights and liberties of the people to pro-



hibit them from manufacturing or dealing in it, for the mere purpose of protecting the producers of dairy butter against competition, yet it cannot be claimed that the producers of butter made from animal fats or oils have any constitutional right to resort to devices for the purpose of making their product resemble in appearance the more expensive article known as 'dairy butter,' or that it is beyond the power of the legislature to enact such laws as they may deem necessary, to prevent the simulated article being put upon the market in such a form and manner as to be calculated to deceive. If it possesses the merits which are claimed for it, and is innocuous, those making and dealing in it should be protected in the enjoyment of liberty in those respects; but they may legally be required to sell it for and as what it actually is, and upon its own merits, and are not entitled to the benefit of any additional market value which may be imparted to it by resorting to artificial means to make it resemble dairy butter in appearance. It may be butter, but it is not butter made from cream, and the difference in cost or market value, if no other, would make it a fraud to pass off one article for the other."

*In re Jacobs*, 98 N. Y., 98, is cited. In that case, the statute purported to be an act to improve the public health by prohibiting the manufacture of cigars in tenement houses. It was held that it was not a health law; that cigar making had no relation to the health of the public and that the act was not intended to protect the health of the occupants of the tenement. In that case it was held, and the proposition is not disputed by the state, that the constitutional guaranty that no person

shall be deprived of his property without due process of law may be violated without the physical taking of property for public or private use, and that any law which destroys it or its value, or takes away any of its essential attributes, deprives the owner of his property. *People vs. Biesecker*, 169 N. Y., 53, 61 N. E., 990, is also cited. It was there held that the statutes under consideration could not be justified as an exercise of power to prevent fraud or imposition on buyers and consumers.

We have referred to these New York cases more fully than necessary, perhaps, but, because of the claim made for the *Marx Case*, we have thought it proper to refer briefly to the others as well. The *Marx Case* is cited and distinguished in *State vs. Snow*, 81 Iowa, 642.

In *Schmidinger vs. Chicago*, 226 U. S., 578, 57 L. Ed., 364, it was held that a city ordinance, fixing the weight of the standard loaf of bread to be sold in the city, and prohibiting the making or selling of loaves not up to the weight of the standard loaf, is not such an unreasonable and arbitrary exercise of the police power as to render the ordinance void under the constitution, prohibiting the taking of property without due process. It was shown in that case that there was a considerable demand for loaves of different size, and that so fixing the size produced some inconvenience. The ordinance was sustained upon the theory that it tended to prevent fraud in the sale of bread. The court said:

“Furthermore, laws and ordinances of the character of the one here under consideration and tending to prevent frauds and requiring honest weights

and measures in the sale of articles of general consumption, have long been considered lawful exercise of the police power." And that: "This court has had frequent occasion to declare that there is no absolute freedom of contract. The exercise of the police power fixing weights and measures and standard sizes must necessarily limit the freedom of contract which would otherwise exist. Such limitations are constantly imposed upon the right to contract freely, because of restrictions upon that right deemed necessary in the interest of the general welfare." And that: "So long as such action has a reasonable relation to the exercise of the power belonging to the local legislative body and is not so arbitrary or capricious as to be a deprivation of due process of law, freedom of contract is not interfered with in a constitutional sense."

That the legislature of the states may, in the exercise of the police power, regulate a lawful business, see *Barrett vs. Indiana*, 229 U. S., 26, 57 L. Ed., 1050.

The following cases may be cited as bearing upon the proposition that the legislature, under its police power, may enact laws for the purpose of preventing fraud in the sale of food products: *State vs. Campbell*, 64 N. H., 402; *Board vs. Van Druens*, 72 Atl. (N. J.), 125; *People vs. Bowen*, 182 N. Y., 1; *Chicago vs. Bowman Dairy Co.*, 234 Ill., 294; *People vs. Worden Grocer Co.*, 118 Mich., 604; *State vs. Crescent Creamery Co.*, 54 L. R. A. (Minn.), 466.

All points raised by the demurrers have been noticed. We are of opinion that the statute is within the police power of the state and is not unreasonable; that it has

a reasonable relation to the object to be effected and does not offend against either the federal or state constitutions in any of the particulars mentioned. It follows that the court erred in sustaining the demurrers. Both cases are *reversed* and *remanded*.

The justices all concur.